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Title 3—

The President

Proclamation 7887 of April 15, 2005

National Park Week, 2005

By the President of the United States of America

A Proclamation

America's system of national parks is dedicated to protecting our resources and preserving our cultural and natural treasures. During National Park Week, we celebrate these places and those who work to support and maintain them. This year's National Park Week theme, ''National Parks: America's Gift to the World,'' reminds us that our country's parks serve as tributes to our Nation's history that are enjoyed by visitors from around the globe.

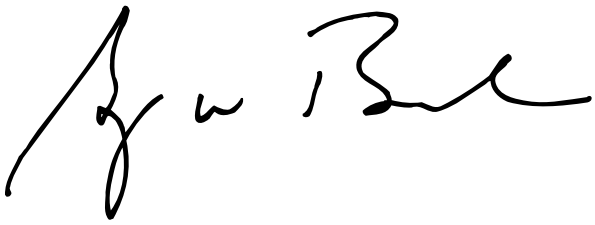
My Administration is dedicated to ensuring that our national parks remain a source of pride for our citizens, and we are expanding our ability to protect America's historical and natural wonders. By insisting upon management excellence, the National Park Service is ensuring that the most vital maintenance and conservation needs of our parks are met and that resources are spent where they are needed the most.

As we observe National Park Week, we recognize the vital contributions of National Park Service employees and volunteers. These dedicated men and women manage nearly 400 areas, covering more than 84 million acres in 49 states. Together with the 140,000 volunteers who donated over 5 million hours to these sites last year, National Park Service employees ensure that our National Parks are safe and enjoyable places where visitors can experience America.

America's national parks reflect our commitment to protect the land that God has entrusted to our care and to mark the milestones that have made us a better Nation. In being good stewards of these treasures, we maintain the legacy of our country for future generations.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim April 18 through April 24, 2005, as National Park Week. I call upon the people of the United States to join me in recognizing the importance of our national parks and to learn more about these places of beauty, their cultural and historical significance, and the many ways citizens can volunteer to protect and conserve these precious national resources.

IN WITNESS WHEREOF, I have hereunto set my hand this fifteenth day of April, in the year of our Lord two thousand five, and of the Independence of the United States of America the two hundred and twenty-ninth.



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Rules and Regulations

Federal Register
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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.

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

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 310

RIN 3206–AK03

Employment of Relatives

AGENCY: Office of Personnel Management.

ACTION: Final regulation.

SUMMARY: The Office of Personnel Management (OPM) is issuing final regulations on a plain language rewrite of its regulations regarding the employment of relatives as part of a broader review of OPM's regulations. The purpose of the revision is to make the regulations more readable.

DATES: *Effective Date:* May 20, 2005.

FOR FURTHER INFORMATION CONTACT: Mr. Scott A. Wilander by telephone at (202) 606–0830; by TTY at (202) 418–3134; by fax at (202) 606–0390; or by e-mail at *sxwiland@opm.gov.*

SUPPLEMENTARY INFORMATION: OPM published for comment on September 22, 2003, (at 68 FR 55012) proposed regulations revising Part 310 to make it more readable. We also proposed to eliminate subpart A because it merely restates the provisions of 5 U.S.C. 3110 which outline the legal restrictions on the employment of relatives.

Comments on Part 310

We received comments from two agencies on this proposal. Both agencies questioned the use of a question-and-answer format for regulations under Title 5, and indicated that they preferred the existing demonstrative statements for titles throughout the Code of Federal Regulations (CFR). We agree with this view and have adopted the agencies' recommendations.

Both agencies also opposed dropping provisions of the regulations that repeat the law. They believed it was beneficial to include these provisions, if only to provide a one-stop-shopping service so that readers would not have to consult both the law and the regulations. We can appreciate this view and, as a result, in general we leave what we perceive to be critical parts of relevant law in regulation. We do not consider that to be necessary or appropriate in this instance, however, because OPM has no particular responsibility for administering this law.

One agency questioned whether the exception that permits the employment of relatives under certain circumstances ''not to exceed 1 month,'' means 30 or 31 days. The agency suggested changing this provision in the regulations to read 30 days. We have adopted this suggestion.

This agency also suggested dividing the proposed rule into two parts to address two important points: (1) Legal restrictions on the employment of relatives; and (2) Exceptions to the legal restrictions on the employment of relatives. We believe this is a good suggestion and have adopted it.

Finally, one agency suggested making clear in the first sentence of proposed section 310.101 that the restriction on the employment of relatives applies to public officials. We have done so.

E.O. 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with E.O. 12866.

Regulatory Flexibility Act

I certify that these regulations would not have a significant economic impact on a substantial number of small entities because it affects only Federal employees.

List of Subjects in 5 CFR Part 310

Government employees.

U.S. Office of Personnel Management.

Dan G. Blair,

Acting Director.

■ Accordingly, OPM is revising 5 CFR part 310 to read as follows:

PART 310—EMPLOYMENT OF RELATIVES

Sec.

310.101 Legal restrictions on public officials in the employment of relatives.
310.102 Exceptions to the legal restrictions on the employment of relatives.

Authority: 5 U.S.C. 3110.

§ 310.101 Legal restrictions on public officials in the employment of relatives.

Section 3110 of title 5, United States Code, sets forth the legal restrictions on the employment of relatives.

§ 310.102 Exceptions to the legal restrictions on the employment of relatives.

Subsection (d) of 5 U.S.C. 3110 authorizes the Office of Personnel Management to prescribe regulations authorizing the temporary employment of relatives, in certain conditions, notwithstanding the restrictions. This regulation sets forth exceptions to the restrictions. When necessary to meet urgent needs resulting from an emergency posing an immediate threat to life or property, or a national emergency as defined in § 230.402(a)(1) of this title, a public official may employ relatives to meet those needs without regard to the restrictions on the employment of relatives in 5 U.S.C. 3110. Such appointments are temporary and may not exceed 30 days, but the agency may extend such an appointment for one additional 30-day period if the emergency need still exists at the time of the extension.

[FR Doc. 05–7842 Filed 4–19–05; 8:45 am]
BILLING CODE 6325–38–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 2

RIN 3150–AH71

Model Milestones For NRC Adjudicatory Proceedings

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations to adopt model milestones for the conduct of NRC adjudicatory proceedings, to require a presiding officer to refer to the model milestones as a starting point for establishing a hearing schedule in an adjudicatory proceeding, and to manage the case in accordance with that schedule.

DATES: *Effective Date:* May 20, 2005. Hearings schedules for proceedings commencing on or after the effective date of this rule shall be established in

accordance with the final rule, unless otherwise directed by the Commission.

FOR FURTHER INFORMATION CONTACT: Geary Mizuno, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–1639, e-mail *gsm@nrc.gov.*

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XI. Small Business Regulatory Enforcement Fairness Act.

I. Background

In Spring 2001, the NRC published for public comment a proposed rule that would substantially revise the NRC's procedures for the conduct of adjudications (66 FR 19610; April 16, 2001). The proposed rule included 10 CFR 2.332 and 2.334, requiring the presiding officer to establish a hearing schedule and manage the case in accordance with that schedule.

In the statement of considerations (SOC) for the proposed Part 2 rule, the Commission requested comment on whether, in addition to proposed 10 CFR 2.332 and 2.334, either flexible milestones or firm schedules should be established in the NRC's rules of practice in 10 CFR Part 2 (66 FR 19610, 19620). Several commenters on the proposed rule supported the adoption by rule of binding schedules. However, one commenter opposed the adoption of flexible milestones or firm schedules. In the SOC for the final rule, 69 FR 2182 (January 14, 2004), the Commission stated that it would not establish by rulemaking generally-applicable milestones for the conduct of proceedings. Instead, it adopted provisions in 10 CFR 2.332 and 2.334 requiring a presiding officer to establish a schedule for the conduct of proceedings, to manage the case in accordance with that schedule, and to notify the Commission when it appears there will be a delay in the overall schedule of sixty (60) days or more.

II. Purpose of Rulemaking

Although the Commission decided not to adopt, as part of the final Part 2 rulemaking, generally-applicable schedules or milestones for the conduct of NRC adjudications, the Commission continued to evaluate the matter. The Commission's considerations were directed towards identifying possible alternatives for governing the pace and timing of adjudicatory proceedings in a manner which fully recognizes the rights of all parties to a fair hearing process and meets the Commission's goal for effective and timely adjudicatory processes. After reviewing several alternatives the Commission has decided to adopt model milestones and changes to the generally-applicable procedures in Subpart C of Part 2 that would govern how these milestones are to be used by presiding officers.

The purpose of the model milestones and accompanying changes to Subpart C are to enhance the efficiency and effectiveness of NRC adjudications, while ensuring that the rights of all parties to fair, effective, and timely adjudications are maintained. The model milestones would be used to establish an initial schedule for an adjudication from which the presiding officer could depart, where appropriate, because of the circumstances of the particular proceeding. The model milestones are tailored to the different types of licensing and regulatory activities the NRC conducts and would better focus the limited resources of involved parties and the NRC. In addition, the model milestones will provide the presiding officer with the flexibility to manage the process reasonably and fairly in establishing initial schedules. The model milestones will also allow for the necessary adaptability in the hearing process by permitting departures from unnecessary interim steps to the major milestones. Thus, the model milestones will increase stakeholder confidence in the independence and fairness of the adjudicatory process by providing the presiding officer with a starting point to create a hearing schedule while maintaining flexibility to consider the individual and unique considerations inherent in any adjudication, and authorizing departures from the hearing schedule as unexpected circumstances arise.

The Commission looked at several alternatives to the concept of model milestones including: Model schedules, binding schedules, binding milestones, and case-by-case imposition by the Commission. Model schedules set forth specific days or periods of time for both the conduct and completion of hearing activities and actions, or the filing of certain specified types of motions. Thus, in contrast to the concept of model milestones, the underlying consideration in the development of the model schedules was the need for detailed and specific guidance to presiding officers on the time periods to be accorded to each discrete step of the hearing. Binding schedules would contain the added requirement that the presiding officer report to the Commission any deviation from the applicable model schedule. Binding milestones would apply the more general and flexible milestones, as described above, to the proceedings but would require the presiding officer to report to the Commission when there was a deviation from the applicable model milestone. Finally, case-by-case oversight by the Commission was considered where the Commission would monitor the presiding officer's actions, and require the Commission's concurrence for certain issues.

Model schedules were rejected as an alternative because of the numerous advantages to utilizing model milestones, as compared with the alternative of model schedules. Model schedules are more detailed and prescriptive and departures from the model schedule must be justified and may themselves become the subject of collateral litigation. In addition, the wide variation of participants, the number of contentions, and other case-specific circumstances and considerations may make it difficult to adhere to a strict set of model schedules.

Binding milestones and binding schedules were rejected because the Commission deemed them too inflexible. Case-specific issues and circumstances require presiding officers to have the flexibility to handle cases on an individual basis without requiring Commission approval for each proposed alteration to the case schedule. In addition, unexpected occurrences or circumstances in the proceedings may require adjustments to the case schedule during the proceedings which would be more efficiently dealt with by the presiding officer without requiring Commission approval.

The Commission rejected the alternative of case-by-case imposition by the Commission because it interfered with matters normally left to the presiding officer. In addition, it would involve substantial expenditure of resources by the Commission. Finally, the Commission determined the goals of a more efficient and fair adjudication process could be accomplished in a less intrusive manner.

Compared with the four alternatives discussed above, model milestones allow for the necessary flexibility to adjust to the specific requirements of each individual hearing and will allow for strong case management and control by the presiding officer. Model milestones merely provide a starting point for the proceedings while

allowing for the necessary flexibility to adjust to the specific requirements of each hearing. Thus, milestones have the advantage of potentially resulting in less delay and unnecessary expenditure of the presiding officer's and parties' resources and should result in less motion practice over what hearing procedures to use.

III. Rulemaking Procedure

Because these amendments constitute minor administrative changes to the regulations, the notice and comment provisions of the Administrative Procedure Act do not apply. *See* 5 U.S.C. 553(b)(A) and 5 U.S.C. 553(b)(B). As stated in section 553(b)(A), the requirement for notice and comment does not apply to ''interpretive rules, general statements of policy, or rules of agency organization, procedure, or practice.'' The changes involved in the present rule are changes to agency procedure and practice and simply prescribe the manner in which the parties present themselves or their viewpoints to the agency. The rule does not alter the substantive rights or interests of the parties. In addition, the balance between the need for public participation in agency decisionmaking and the agency's competing interest in retaining latitude in organizing its operations weighs in favor of the agency because the rule merely establishes a starting point which the presiding officer will utilize to establish a hearing schedule. The public's rights to and interests in a hearing are not altered or affected by establishing this starting point to the hearing schedule. Thus, this rulemaking is exempt from the notice and comment provisions.

In addition, 5 U.S.C. 553(b)(B) provides that when an agency finds good cause that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest, the rulemaking is exempt from notice and comment requirements. In the present case, the model milestones are largely drawn from the time periods specifically provided in the January 14, 2004 revisions to 10 CFR Part 2, on which the public has already had an opportunity to comment as part of that rulemaking. Additionally, as noted above, the Commission adopted provisions in 10 CFR 2.332 and 2.334 requiring a presiding officer to establish a schedule for the conduct of proceedings, to manage the case against that schedule, and to notify the Commission when it appears there will be slippage in the overall schedule. Thus, the present rulemaking merely provides the starting point for the presiding officer to base the schedule of proceedings. Public notice and comment was already provided for the implementation of a schedule and for the time periods. Thus, additional notice and comment procedures would be duplicative and unnecessary.

IV. Section-by-Section Analysis

Effective Date

The new provisions in §§ 2.332 and 2.334, requiring presiding officers to establish a hearing schedule for a proceeding based upon the applicable model milestones and to manage the case against that hearing schedule, are applicable to all proceedings commencing on or after the effective date of the final rule. For a proceeding in which a notice of hearing or a notice of opportunity for hearing are published in the **Federal Register**, the proceeding ''commences'' on the date of publication in the **Federal Register** of the notice of hearing, or the notice of opportunity for hearing or petition to intervene for that proceeding, as applicable. For a proceeding in which a notice of hearing or opportunity for hearing is not published in the **Federal Register**, the proceeding ''commences'' on the date that the first request for hearing or petition to intervene is received by the Commission.

Section 2.332 General Case Scheduling and Management

10 CFR 2.332(a) would be amended to add language requiring the scheduling order, created by the hearing officer, to also establish when the oral phase of the hearing will commence.

10 CFR 2.332(a)(2) would remove the term ''and hearings'' because the scheduling order is now required to establish the limits to commence the oral phase of the hearing under paragraph (a). Thus the language in (a)(2) permitting the scheduling order to contain such information is unnecessary.

A new 10 CFR 2.332(b) is added to require the presiding officer to utilize the applicable model milestones in Appendix B of this part as a starting point to establish the scheduling order. This section provides that appropriate modifications by the presiding officer may be made based upon all relevant information. The flexibility provided by this section allows the presiding officer to consider all relevant information, which includes but is not limited to the number of contentions admitted, the complexity of the issues presented, relevant considerations which a party may bring to the attention of the presiding officer, the NRC staff's schedule for completion of its safety and environmental evaluations (paragraph (d) of this section), and the NRC's interest in providing a fair and expeditious resolution of the issues sought to be adjudicated by the parties in the proceeding.

Section 2.334 Implementing Hearing Schedule for Proceeding

10 CFR 2.334(a) contains conforming changes which reflect the change in 10 CFR 2.332(b). 10 CFR 2.332(b) now requires the presiding officer to utilize the applicable model milestones in Appendix B to this part as a starting point to create the hearing schedule.

The language in former 10 CFR 2.332(b) would be transferred to 10 CFR 2.334(b). The language is otherwise unchanged except for a modification to refer to ''hearing schedule,'' as opposed to ''schedule.''

10 CFR 2.334(b) is renumbered 10 CFR 2.334(c). In addition, an added provision requires the presiding officer assigned to the proceeding to provide written notification to the Commission any time during the course of the proceeding when it appears that there will be a delay of greater than forty-five (45) days in meeting any of the dates for major activities in the hearing schedule established by the presiding officer under 10 CFR 2.332(a). This requirement ensures that the Commission is kept well informed regarding any potential delays in the hearing schedule and encourages the parties and presiding officer to adhere to the established hearing schedule if possible. An additional conforming change to refer to ''hearing schedule'' is also made.

Part 2, Appendix B—Model Milestones To Be Used by a Presiding Officer as a Guideline in Developing a Hearing Schedule for the Conduct of an Adjudicatory Proceeding in Accordance With 10 CFR 2.332

10 CFR Part 2, Appendix B contains four model milestones for adjudicatory hearings: The generic hearing track (Subpart L), license transfer (Subpart M), enforcement action (Subpart G), and enforcement action (Subpart N). In establishing a schedule, the presiding officer is required by 10 CFR 2.332 to use these milestones as a starting point, make appropriate modifications to the milestones, and set detailed schedules (*e.g.*, for filings) based upon all relevant information. Such information includes, but is not limited to, the number of contentions admitted, the complexity of the issues, the NRC staff's schedule for completion of its safety and environmental evaluations, any other relevant consideration that a party

brings to the attention of the presiding officer, and the NRC's interest in providing a fair and expeditious resolution of the issues sought to be admitted for adjudication in the proceeding.

10 CFR 2.334 allows the presiding officer to modify the hearing schedule from the initial milestones upon a finding by the presiding officer or the Commission of good cause. Factors such as whether the requesting party has exercised due diligence to adhere to the schedule, whether the requested change is the result of unavoidable circumstances, whether the other parties have agreed to the change, and the overall effect of the change on the schedule of the case are taken into account. In addition, the presiding officer is required by 10 CFR 2.334 to provide written notification to the Commission any time during the course of the proceeding when it appears that there will be a delay of greater than forty-five (45) days in meeting any of the dates for major activities in the hearing schedule established by the presiding officer under 10 CFR 2.332(a). Finally, 10 CFR 2.334 requires the presiding officer to provide written notification if completion of the record or the issuance of the initial decision will be delayed more than sixty (60) days beyond the time specified in the hearing schedule established under 10 CFR 2.332(a). The model milestones reflect electronic filing and service in accordance with 10 CFR 2.305.

Appendix B. I.—Model Milestones for a Hearing on an Enforcement Action Conducted Under 10 CFR Part 2, Subpart G

This model set of milestones applies to hearings in enforcement proceedings conducted under 10 CFR Part 2, Subpart G. As required by 10 CFR 2.332 and 2.334, the presiding officer establishes, by order, a schedule for the conduct of the proceeding. The model milestones are based on the Commission's Rules of Practice in 10 CFR Part 2, Subparts B, C, and G. The model milestones are based upon the following assumptions: (i) The issues to be litigated will involve both disputes over fact and issues of compliance with the Commission's regulations and requirements; and (ii) no petitions to intervene are filed pursuant to 10 CFR 2.309(a)–(b). In some cases, preparation of direct testimony and motions for summary disposition can proceed once initial mandatory disclosures have been made. The time periods set forth in the model milestones reflect these assumptions.

Appendix B. II.—Model Milestones for Hearings Conducted Under 10 CFR Part 2, Subpart L

This model set of milestones applies to hearings conducted under 10 CFR Part 2, Subpart L, including those on applications for combined licenses (COLs), renewed licenses, and license amendments. While such proceedings differ insofar as the scope and complexity of the NRC staff reviews for the requested actions may vary, such differences will be reflected in the staff's schedule for issuing its review documents in a particular type of action. Because the milestones are keyed to the staff's review schedule, separate milestones need not be identified for proceedings on the different types of actions. As required by 10 CFR 2.332 and 2.334, the presiding officer establishes, by order, a schedule for the conduct of each proceeding. The model milestones include only the most significant events in the proceeding and are based upon the following assumptions: (i) The issues to be litigated will involve both disputes over fact and issues of compliance with the Commission's regulations and requirements; (ii) an oral hearing under 10 CFR 2.1207 will be held rather than a written hearing under 10 CFR 2.1208; and (iii) the final Safety Evaluation Report (SER) and final environmental document will be issued simultaneously.

Appendix B. III.—Model Milestones for a Hearing on a Transfer of a License Conducted Under 10 CFR Part 2, Subpart M

This model set of milestones applies to hearings on license transfer proceedings conducted under 10 CFR Part 2, Subpart M. Subpart M governs all adjudicatory proceedings on an application for the direct or indirect transfer of control of an NRC license when the transfer requires prior approval of the NRC under the Commission's regulations, governing statutes, or pursuant to a license condition. As required by 10 CFR 2.332 and 2.334, the presiding officer establishes, by order, a schedule for the conduct of each proceeding. The model milestones are based on the Commission's Rules of Practice in 10 CFR Part 2, Subparts C and M. The model milestones include only the most significant events in the proceeding, and are based upon the following assumptions: (i) The issues to be litigated will involve both disputes over fact and issues of compliance with the Commission's regulations and requirements; (ii) the parties do not file a joint request under 10 CFR 2.1308 for a hearing consisting of written comments; (iii) the final Safety Evaluation Report (SER) is not necessary to resolve the issues to be litigated; (iv) the Commission itself does not serve as the presiding officer; and (v) the Commission does not order further taking of testimony after the presiding officer certifies the record to the Commission under 10 CFR 2.1319(f).

Appendix B. IV.—Model Milestones for a Hearing on an Enforcement Action Conducted Under 10 CFR Part 2, Subpart N

This model set of milestones applies to hearings on enforcement proceedings conducted under 10 CFR Part 2, Subpart N. Subpart N provides simplified procedures for the expeditious resolution of disputes among parties in an informal hearing process. As required by 10 CFR 2.332 and 2.334, the presiding officer establishes, by order, a schedule for the conduct of each proceeding. The model milestones are based on the Commission's Rules of Practice in 10 CFR Part 2, Subparts B, C, and N. The model milestones are based upon the following assumptions: (i) The issues to be litigated will involve both disputes over fact and issues of compliance with the Commission's regulations and requirements; and (ii) no petitions to intervene are filed pursuant to 10 CFR 2.309(a)–(b). The only discovery provided is the mandatory disclosure made by each party pursuant to 10 CFR 2.336.

V. Voluntary Consensus Standards

The National Technology 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 a standard is inconsistent with applicable law or otherwise impractical. In this final rule, the NRC is requiring the presiding officer to refer to the model milestones as a starting point for establishing a hearing schedule and managing the case against that schedule. This action does not constitute the establishment of a government-unique standard as defined in the Office of Management and Budget (OMB) Circular A–119 (1998).

VI. Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). 10 CFR 51.22(c)(1) provides a categorical exclusion for amendments to certain parts of this chapter including 10 CFR Part 2. Therefore, neither an

environmental impact statement nor an environmental assessment has been prepared for this final rule.

VII. Paperwork Reduction Act Statement

This final rule does not contain new or amended information collection requirements and, therefore is not subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

VIII. Regulatory Analysis

A regulatory analysis has not been prepared for this final rule because this rule is considered minor and not a substantial amendment; it has no economic impact on NRC licensees or the public.

IX. Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), does not apply to a final rule for which a proposed rule was not issued, and thus is not applicable to this rulemaking.

X. Backfit Analysis

The NRC has determined that the backfit rules (§§ 50.109, 70.76, 72.62, or 76.76) do not apply to this direct final rule because this amendment does not involve any provisions that would impose backfits as defined in 10 CFR Chapter I. Therefore, a backfit analysis is not required.

XI. Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs of OMB.

List of Subjects in 10 CFR Part 2

Administrative practice and procedure, Antitrust, Byproduct material, Classified information, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Penalties, Sex discrimination, Source material, Special nuclear material, Waste treatment and disposal.

■ For the reasons set out 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. 552 and 553, the NRC is adopting the following amendments to 10 CFR Part 2.

PART 2—RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS AND ISSUANCE OF ORDERS

■ 1. The authority citation for Part 2 continues to read as follows:

Authority: Secs. 161, 181, 68 Stat. 948, 953, as amended (42 U.S.C. 2201, 2231); sec. 191, as amended, Pub. L. 87–615, 76 Stat. 409 (42 U.S.C. 2241); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); 5 U.S.C. 552; sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note). Section 2.101 also issued under secs. 53, 62, 63, 81, 103, 104, 105, 68 Stat. 930, 932, 933, 935, 936, 937, 938, as amended (42 U.S.C. 2073, 2092, 2093, 2111, 2133, 2134, 2135); sec. 114(f), Pub. L. 97–425, 96 Stat. 2213, as amended (42 U.S.C. 10143(f)), sec. 102, Pub. L. 91–190, 83 Stat. 853, as amended (42 U.S.C. 4332); sec. 301, 88 Stat. 1248 (42 U.S.C. 5871). Sections 2.102, 2.103, 2.104, 2.105, 2.721 also issued under secs. 102, 103, 104, 105, 183i, 189, 68 Stat. 936, 937, 938, 954, 955, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2233, 2239). Sections 2.105 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Sections 2.200–2.206 also issued under secs. 161 b, I, o, 182, 186, 234, 68 Stat. 948–951, 955, 83 Stat. 444, as amended (42 U.S.C. 2201 (b), (I), (o), 2236, 2282); sec. 206, 88 Stat 1246 (42 U.S.C. 5846). Section 2.205(j) also issued under Pub. L. 101–410, 104 Stat. 90, as amended by section 3100(s), Pub. L. 104–134, 110 Stat. 1321–373 (28 U.S.C. 2461 note). Sections 2.600–2.606 also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853, as amended (42 U.S.C. 4332). Sections 2.700a, 2.719 also issued under 5 U.S.C. 554. Sections 2.754, 2.760, 2.770, 2.780 also issued under 5 U.S.C. 557. Section 2.764 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 2.790 also issued under sec. 103, 68 Stat. 936, as amended (42 U.S.C. 2133), and 5 U.S.C. 552. Sections 2.800 and 2.808 also issued under 5 U.S.C. 553. Section 2.809 also issued under 5 U.S.C. 553, and sec. 29, Pub. L. 85–256, 71 Stat. 579, as amended (42 U.S.C. 2039). Subpart K also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Subpart L also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239). Subpart M also issued under sec. 184 (42 U.S.C. 2234) and sec. 189, 68 Stat. 955 (42 U.S.C. 2239). Appendix A also issued under sec. 6, Pub. L. 91–560, 84 Stat. 1473 (42 U.S.C. 2135).

■ 2. In 10 CFR 2.332, the introductory text of paragraph (a) and paragraphs (a)(2) and (b) are revised to read as follows:

§ 2.332 General case scheduling and management.

(a) *Scheduling order.* The presiding officer shall, as soon as practicable after consulting with the parties by a scheduling conference, telephone, mail, or other suitable means, enter a scheduling order that establishes limits for the time to file motions, conclude discovery, commence the oral phase of the hearing (if applicable), and take other actions in the proceeding. The scheduling order may also include:

* * * * *

(2) The date or dates for prehearing conferences; and

* * * * *

(b) *Model milestones.* In developing the scheduling order under paragraph (a) of this section, the presiding officer shall utilize the applicable model milestones in Appendix B to this part as a starting point. The presiding officer shall make appropriate modifications based upon all relevant information, including but not limited to, the number of contentions admitted, the complexity of the issues presented, relevant considerations which a party may bring to the attention of the presiding officer, the NRC staff's schedule for completion of its safety and environmental evaluations (paragraph (e) of this section), and the NRC's interest in providing a fair and expeditious resolution of the issues sought to be adjudicated by the parties in the proceeding.

* * * * *

■ 3. Section 2.334 is revised to read as follows:

§ 2.334 Implementing hearing schedule for proceeding.

(a) Unless the Commission directs otherwise in a particular proceeding, the presiding officer assigned to the proceeding shall, based on information and projections provided by the parties and the NRC staff, take appropriate action to maintain the hearing schedule established by the presiding officer in accordance with 10 CFR 2.332(a) of this part for the completion of the evidentiary record and, as appropriate, the issuance of its initial decision.

(b) *Modification of hearing schedule.* A hearing schedule may not be modified except upon a finding of good cause by the presiding officer or the Commission. In making such a good cause determination, the presiding officer or the Commission should take into account the following factors, among other things:

(1) Whether the requesting party has exercised due diligence to adhere to the schedule;

(2) Whether the requested change is the result of unavoidable circumstances; and

(3) Whether the other parties have agreed to the change and the overall effect of the change on the schedule of the case.

(c) The presiding officer shall provide written notification to the Commission any time during the course of the proceeding when it appears that there

will be a delay of more than forty-five (45) days in meeting any of the dates for major activities in the hearing schedule established by the presiding officer under 10 CFR 2.332(a), or that the completion of the record or the issuance of the initial decision will be delayed more than sixty (60) days beyond the time specified in the hearing schedule established under 10 CFR 2.332(a). The notification must include an explanation of the reasons for the projected delay and a description of the actions, if any, that the presiding officer or the Board proposes to take to avoid or mitigate the delay.

■ 4. New Appendix B to 10 CFR Part 2 is added to read as follows:

Appendix B to 10 CFR Part 2—Model Milestones To Be Used By a Presiding Officer as a Guideline in Developing a Hearing Schedule for the Conduct of an Adjudicatory Proceeding in Accordance With 10 CFR 2.332.

I. Model Milestones for a Hearing on an Enforcement Action Conducted Under 10 CFR Part 2, Subpart G

These model milestones would apply to enforcement proceedings conducted under 10 CFR Part 2, Subpart G. As required by 10 CFR 2.332 and 2.334, the presiding officer establishes, by order, a schedule for the conduct of the proceeding. In establishing a schedule, the presiding officer should use these milestones as a starting point, make appropriate modifications to the milestones, and set detailed schedules (*e.g.*, for filings) based upon all relevant information. Such information would include, but not be limited to, the complexity of the issues, any other relevant consideration that a party brings to the attention of the presiding officer, and the NRC's interest in providing a fair and expeditious resolution of the issues to be adjudicated in the proceeding. The model milestones are based on the Commission's Rules of Practice in 10 CFR Part 2, Subparts B, C, and G.

The model milestones are based upon the following assumptions: (i) the issues to be litigated will involve both disputes over fact and issues of compliance with the Commission's regulations and requirements; and (ii) no petitions to intervene are filed pursuant to 10 CFR 2.309(a)–(b). The model milestones reflect electronic filing and service in accordance with 10 CFR 2.305. In some cases, preparation of direct testimony and motions for summary disposition can proceed once initial mandatory disclosures have been made. The time periods set forth in the model milestones reflect these assumptions.

MODEL MILESTONES

[10 CFR Part 2, Subpart G]

• Within 20 days of date of enforcement order:	Person subject to order files answer; if order immediately effective, motion to set aside immediate effectiveness due; requests for hearing due.
• Within 100 days of enforcement order:	Presiding officer issues order on hearing request by person who is subject of enforcement order.
• Within 25 days of presiding officer decision granting hearing:	Presiding officer sets initial schedule for the proceeding.
• Within 145 days of presiding officer decision granting hearing:	Discovery complete.
• Within 155 days of presiding officer decision granting hearing:	Motions for summary disposition due.
• Within 235 days of presiding officer decision granting hearing:	Presiding officer decisions on motions for summary disposition.
• Within 245 days of presiding officer decision granting hearing:	Prehearing conference (optional); presiding officer sets schedule for remainder of proceeding.
• Within 275 days of presiding officer decision granting hearing:	Written testimony filed.
• Within 90 days of end of evidentiary hearing and closing of record:	Presiding officer issues initial decision.

II. Model Milestones for Hearings Conducted Under 10 CFR Part 2, Subpart L

These model milestones would apply to proceedings conducted under 10 CFR Part 2, Subpart L, including those on applications for combined licenses (COLs), renewed licenses, and license amendments. While such proceedings differ insofar as the scope and complexity of the NRC staff reviews for the requested actions may vary, such differences will be reflected in the staff's schedule for issuing its review documents in a particular type of action. Because the milestones are keyed to the staff's review schedule, separate milestones are not identified for proceedings on the different types of actions.

As required by 10 CFR 2.332 and 2.334, the presiding officer establishes, by order, a schedule for the conduct of each proceeding. In establishing a schedule, the presiding officer should use these milestones as a starting point, make appropriate modifications to the milestones, and set detailed schedules (*e.g.*, for filings) based upon all relevant information. Such information would include, but not be limited to, the number of contentions admitted, the complexity of the issues, the NRC staff's schedule for completion of its safety and environmental evaluations, any other relevant consideration that a party brings to the attention of the presiding officer, and the NRC's interest in providing a fair and expeditious resolution of the issues sought to be admitted for adjudication in the proceeding. The model milestones are based on the Commission's Rules of Practice in 10 CFR Part 2, Subparts B, C, and L.

The model milestones include only the most significant events in the proceeding and are based upon the following assumptions: (I) the issues to be litigated will involve both disputes over fact and issues of compliance with the Commission's regulations and requirements; (ii) an oral hearing under 10 CFR 2.1207 will be held rather than a written hearing under 10 CFR 2.1208; and (iii) the final Safety Evaluation Report (SER) and final environmental document will be issued simultaneously. The model milestones reflect electronic filing and service in accordance with 10 CFR 2.305.

MODEL MILESTONES

[10 CFR Part 2, Subpart L]

• Within 140 of publication days of notice in FEDERAL REGISTER:	Presiding officer decision on intervention petitions and admission of contentions.
• Within 55 days of presiding officer decision granting intervention and admitting contentions:	Presiding officer to set initial schedule for proceeding, based on staff schedule for issuing draft and final SERs and any necessary NEPA document.

MODEL MILESTONES—Continued

[10 CFR Part 2, Subpart L]

• Within 30 days of issuance of SER and any necessary NEPA document:	Proposed late-filed contentions on SER and necessary NEPA documents filed; motions for summary disposition on previously admitted contentions due.
• Within 85 days of issuance of SER and NEPA document:	Presiding officer decision on admission of proposed late-filed contentions and motions for summary disposition; presiding officer sets schedule for remainder of proceeding.
• Within 14 days after presiding officer decision on amended/late-filed contentions:	All parties complete updates of mandatory disclosures.
• Within 115 days of issuance of SER and NEPA document:	Motions for summary disposition due.
• Within 155 days of issuance of SER and NEPA document:	Written direct testimony filed.
• Within 175 days of issuance of SER and NEPA document:	Evidentiary hearing begins.
• Within 90 days of end of evidentiary hearing and closing of record:	Presiding officer issues initial decision.

III. Model Milestones for a Hearing on a Transfer of a License Conducted Under 10 CFR Part 2, Subpart M

These model milestones would apply to proceedings conducted under 10 CFR Part 2, Subpart M on applications for license transfer. As required by 10 CFR 2.332 and 2.334, the presiding officer establishes, by order, a schedule for the conduct of each proceeding. In establishing a schedule, the presiding officer should use these milestones as a starting point, make appropriate modifications to the milestones, and set detailed schedules (*e.g.*, for filings) based upon all relevant information. Such information would include, but not be limited to, the number of contentions admitted, the complexity of the issues, the NRC staff's schedule for completion of its safety and environmental evaluations, any other relevant consideration that a party brings to the attention of the presiding officer, and the NRC's interest in providing a fair and expeditious resolution of the issues sought to be admitted for adjudication in the proceeding. The model milestones are based on the Commission's Rules of Practice in 10 CFR Part 2, Subparts B, C and M.

The model milestones include only the most significant events in the proceeding, and are based upon the following assumptions: (i) The issues to be litigated will involve both disputes over fact and issues of compliance with the Commission's regulations and requirements; (ii) the parties do not file a joint request under 10 CFR 2.1308 for a hearing consisting of written comments; (iii) the final Safety Evaluation Report (SER) is not necessary to resolve the issues to be litigated; (iv) the Commission itself does not serve as the presiding officer; and (v) the Commission does not order further taking of testimony after the presiding officer certifies the record to the Commission under 10 CFR 2.1319(f). The model milestones reflect electronic filing and service in accordance with 10 CFR 2.305.

MODEL MILESTONES

[10 CFR Part 2, Subpart M]

• Within 100 days of publication of FEDERAL REGISTER notice of opportunity for hearing:	Presiding officer decision on intervention petitions and admission of contentions.
• Within 30 days of order granting hearing petitions:	NRC staff and other parties complete mandatory disclosures.
• Within 12 days of completion of mandatory disclosures:	Presiding Officer issues scheduling order to address, inter alia, scheduling of oral hearing, filing of written statements of position, direct testimony, and rebuttal testimony.
• Within 45 days of scheduling order:	Oral hearing commences.
• Within 25 days after hearing ends:	Presiding officer certifies hearing record to the Commission.

IV. Model Milestones for a Hearing on an Enforcement Action Conducted Under 10 CFR Part 2, Subpart N

These model milestones would apply to enforcement proceedings conducted under 10 CFR Part 2, Subpart N. As required by 10 CFR 2.332 and 2.334, the presiding officer establishes, by order, a schedule for the conduct of each proceeding. In establishing a schedule, the presiding officer should use these milestones as a starting point, make appropriate modifications to the milestones, and set detailed schedules based upon all relevant information. The model milestones are based on the Commission's Rules of Practice in 10 CFR Part 2, Subparts B, C, and N.

The model milestones are based upon the following assumptions: (i) The issues to be litigated will involve both disputes over fact and issues of compliance with the Commission's regulations and requirements; and (ii) no petitions to intervene are filed pursuant to 10 CFR 2.309(a)–(b). The model milestones reflect electronic filing and service in accordance with 10 CFR 2.305. The only discovery provided is the mandatory disclosure made by each party pursuant to 10 CFR 2.336.

MODEL MILESTONES

[10 CFR Part 2, Subpart N]

• Within 20 of date of enforcement order:	Person subject to order files answer; if order immediately effective, motion to set aside immediate effectiveness due; requests for hearing due, including joint motion to use Subpart N procedures.

MODEL MILESTONES—Continued

[10 CFR Part 2, Subpart N]

• Within 50 days of date of enforcement order:	Presiding officer decision on requests for hearing and confirms use of Subpart N procedures (note: if presiding officer concludes that Subpart N procedures should not be used, the Model Milestone for Enforcement Actions under Subpart G are applicable).
• Within 30 days of presiding officer decision granting hearing:	Mandatory disclosures complete.
• Within 40 days of presiding officer decision granting hearing:	Prehearing conference to specify issues for hearing and set schedules for remaining course of proceeding.
• Within 60 days of presiding officer decision granting hearing:	Evidentiary hearing begins.
• Within 30 days of end of evidentiary hearing and closing of record:	Presiding officer issues initial decision.

Dated at Rockville, Maryland, this 14th day of April, 2005.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. 05–7846 Filed 4–19–05; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD01–04–126]

RIN 1625–AA09

Drawbridge Operation Regulations: Cheesequake Creek, NJ

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard has changed the drawbridge operation regulations that govern the operation of the S35 Bridge, mile 0.0, across Cheesequake Creek at Morgan, South Amboy, New Jersey. This final rule allows the bridge to open on the hour only from 7 a.m. to 8 p.m., May 1 through October 31. In addition, this rule allows the bridge owner to require a 4-hour advance notice for openings from 11 p.m. to 7 a.m. all year, and all day from November 1 through April 30. This rule is expected to relieve the bridge owner of the burden of crewing the bridge at all times while still providing for the reasonable needs of navigation.

DATES: This rule is effective May 20, 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 (CGD01–04–126) and are available for inspection or copying at the First Coast Guard District, Bridge Branch Office, 408 Atlantic Avenue, Boston, Massachusetts 02110, between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Gary Kassof, Bridge Administrator, First Coast Guard District, (212) 668–7165.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On December 17, 2004, we published a notice of proposed rulemaking (NPRM) entitled Drawbridge Operation Regulations; Cheesequake Creek, New Jersey, in the **Federal Register** (69 FR 75493). We received no comments in response to the notice of proposed rulemaking. No public hearing was requested and none was held.

Background and Purpose

The S35 Bridge has a vertical clearance of 25 feet at mean high water and 30 feet at mean low water in the closed position. The existing drawbridge operation regulations listed at 33 CFR 117.709(a), require the bridge to open on signal; except that, from May 15 through October 15 from 7 a.m. to 7 p.m., the draw need only open on the hour. From December 1 through March 31 from 11 p.m. to 7 a.m., the draw need not be opened for the passage of vessels.

Cheesequake Creek is navigated predominately by small recreational vessels between April and November only. The bridge seldom opens during the winter months December through March.

The bridge owner, New Jersey Department of Transportation (NJDOT), requested that the drawbridge operation regulations for the S35 Bridge be changed to allow the bridge to open on the hour only from 7 a.m. to 8 p.m., May 1 through October 31. The hourly openings are currently in effect from 7 a.m. to 7 p.m., May 15 through October 15.

In addition, this final rule allows the bridge owner to require a 4-hour advance notice for bridge openings from 11 p.m. to 7 a.m. all year round and all day from November 1 through April 30. Bridge openings during the on-call time period may be obtained by calling the number posted at the bridge.

Discussion of Comments and Changes

The Coast Guard received no comments in response to the notice of proposed rulemaking and as a result, no changes have been made to this final rule.

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).

This conclusion is based on the fact that the bridge will continue to open for vessel traffic during the time periods vessel traffic has historically required the bridge to open.

Small Entities

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

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

This conclusion is based on the fact that the bridge will continue to open for vessel traffic during the time periods vessel traffic has historically required the bridge to open.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 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.

No small entities requested Coast Guard assistance and none was given.

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 State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not 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 concern an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This final rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have 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 proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this final rule under Commandant Instruction M16475.1D, 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 (32)(e), of the Instruction, from further environmental documentation. It has been determined that this final rule does not significantly impact the environment.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

■ For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; Department of Homeland Security Delegation No. 0170.1; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

■ 2. Section 117.709 is amended by revising paragraph (a) to read as follows:

§ 117.709 Cheesequake Creek.

(a) The draw of the of the S35 Bridge, at mile 0.0, at Morgan, South Amboy, New Jersey, shall operate as follows:

(1) From May 1 through October 31 from 7 a.m. to 8 p.m., the draw need only open on the hour. From 8 p.m. to 11 p.m. the Draw shall open on signal. From 11 p.m. to 7 a.m. the draw shall open after at least a 4-hour advance notice is given by calling the number posted at the bridge.

(2) From November 1 through April 30 the draw shall open on signal after at least a 4-hour advance notice is given by calling the number posted at the bridge.

* * * * *

Dated: April 11, 2005.

David P. Peskoske,

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

[FR Doc. 05–7896 Filed 4–19–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD 11–05–025]

RIN 1625–AA09

Drawbridge Operation Regulation; Napa River, CA

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is removing the existing drawbridge operation regulation for the draw of the Maxwell Highway Bridge, mile 17.6, near Imola, CA. The drawbridge has been removed from the waterway. Therefore, the regulation controlling the operation of the drawbridge is no longer necessary.

DATES: This rule is effective April 20, 2005.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of the docket CGD 11–05–025, and are available for inspection or copying at the office of the Eleventh Coast Guard District, Bridge Section, Building 50–3, Coast Guard Island, Alameda, CA 94501–5100, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: David H. Sulouff, Chief, Bridge Section, Eleventh Coast Guard District, telephone (510) 437–3516.

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. The Maxwell Drawbridge has been removed and replaced by a fixed, high-level bridge. Since the drawbridge no longer exists, the operating schedule in 33 CFR 117.169(c) is no longer needed and is being removed.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective in less than 30 days after publication in the **Federal Register**, because, as explained above, it eliminates the governing regulation at 33 CFR 117.169(c) for a drawbridge that has been removed from the waterway.

Background and Purpose

On February 4, 2002 the Coast Guard issued a permit for a fixed, high-level bridge to replace the Maxwell Highway drawbridge, mile 17.6, near Imola, CA. Land traffic has been shifted to the replacement bridge and the drawbridge, governed by 33 CFR 117.169(c), has been removed.

Discussion of Rule

This final rule removes paragraph (c), regarding the Maxwell Highway Drawbridge, from section 117.169.

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).

A special operating regulation exists for this drawbridge. This drawbridge has been removed from the waterway, making the regulation unnecessary. 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.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule, to remove an obsolete drawbridge regulation, will have no impact on any small entities.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 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.

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 the preamble.

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not cause 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 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 (32)(e) of the Instruction, from further environmental documentation. Paragraph (32)(e) excludes the promulgation of operating regulations or procedures for drawbridges from the environmental documentation requirements of NEPA.

Under figure 2–1, paragraph (34)(e), 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 117

Bridges.

■ For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05–1(g); Department of Homeland Security Delegation No. 0170.1; section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

§ 117.169 [Amended]

■ 2. In section 117.169, remove paragraph (c).

Dated: April 11, 2005.

Kevin J. Eldridge,

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

[FR Doc. 05–7897 Filed 4–19–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD08–05–004]

RIN 1625–AA09

Drawbridge Operation Regulation; Houma Navigation Canal, Houma, LA

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is changing the regulation governing the operation of the SR 661 (Houma Nav Canal) swing bridge across the Houma Navigation Canal, mile 36.0, in Houma, Louisiana. An increase in traffic during the noontime time period has facilitated a request to allow the bridge to remain closed to navigation for two (2), 30-minute periods in the middle of the day. These closures will allow local workers to transit the area with minimal delays during the noontime lunch period.

DATES: This rule is effective May 20, 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 [CGD08–05–004] and are available for inspection or copying at the office of the Eighth Coast Guard District, Bridge Administration Branch, 501 Magazine Street, New Orleans, Louisiana 70130–3396, between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The Bridge Administration Branch maintains the public docket for this rulemaking.

FOR FURTHER INFORMATION CONTACT: Mr. David Frank, Bridge Administration Branch, at (504) 589–2965.

SUPPLEMENTARY INFORMATION:

Regulatory History

On January 28, 2005, we published a notice of proposed rulemaking (NPRM) entitled, ''Drawbridge Operation Regulation; Houma Navigation Canal, Houma, LA,'' in the **Federal Register** (70 FR 4077). We received four letters commenting on the proposed rule. No public meeting was requested, and none was held.

Background and Purpose

The U.S. Coast Guard, at the request of the State of Louisiana, Department of Transportation and Development (LDOTD), and supported by the Terrebonne Parish Council, is modifying the existing operating schedule of the SR 661 (Houma Nav Canal) swing bridge across the Houma Navigation Canal, mile 36.0, in Houma, Terrebonne Parish, Louisiana. The modification of the existing regulations will allow the bridge to remain closed to navigation for two (2), 30-minute periods in the middle of the day to allow for local workers to transit the area with minimal delays during the noontime lunch period.

Currently, the bridge opens on signal; except that, the draw need not open for the passage of vessels Monday through Friday, except Federal holidays from 6:30 a.m. to 8:30 a.m. and from 4:30 p.m. to 6 p.m.

Approximately 9,500 vehicles cross the bridge daily, 6% of which cross the bridge during the requested noon closure times. The bridge averages 932 openings a month. The requested two (2), 30-minute closures will delay approximately 133 additional tows a month for a maximum of 30 minutes. The average length of a bridge opening is approximately nine minutes, delaying an average of 44 vehicles per opening during the noontime bridge openings.

Navigation at the site of the bridge consists primarily of tugboats with

barges. Alternate routes are available but not readily accessible.

Discussion of Comments and Changes

Four letters were received with regards to the NPRM. Oil States Industries in Houma wrote in support of the changes. The Terrebonne Parish Council wrote in support of the changes. The National Resources Conservation Service offered no comments. Trico Marine Operators wrote in support of the changes but suggested that the words ''except Federal holidays'' be eliminated, as many private entities do not observe some or all of these Federal holidays. Based upon this comments, no changes were made to the proposed regulation.

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).

This rule allows vessels ample opportunity to transit this waterway with proper notification before and after the peak vehicular traffic periods. According to the vehicle traffic surveys, the public at large is better served by the additional closure times during the noontime lunch periods.

Small Entities

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

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

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking process.

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 the preamble.

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not cause 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 (32)(e), of the Instruction, from further environmental documentation. This final rule involves modifying the existing drawbridge operation regulation for a benefit of all modes of transportation. It will not have any impact on the environment.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

■ For the reasons set out in the preamble, the Coast Guard is amending part 117 of title 33, Code of Federal Regulations as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; Department of Homeland Security Delegation No. 0170.1; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

■ 2. § 117.455 is revised to read as follows:

§ 117.455 Houma Navigation Canal.

The draw of SR 661 (Houma Nav Canal) bridge, mile 36.0, at Houma, shall open on signal; except that, the draw need not open for the passage of vessels Monday through Friday except Federal holidays from 6:30 a.m. to 8:30 a.m., from 11:45 a.m. to 12:15 p.m., from 12:45 p.m. to 1:15 p.m. and from 4:30 p.m. to 6 p.m.

Dated: April 8, 2005.

R.F. Duncan,

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

[FR Doc. 05–7898 Filed 4–19–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD01–05–026]

Drawbridge Operation Regulations: Connecticut River, CT

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the drawbridge operation regulations for the Amtrak Old Saybrook-Old Lyme Bridge, mile 3.4, across the Connecticut River, Connecticut. This deviation from the regulations allows scheduled bridge openings every two hours between 8 a.m. and 4 p.m. each day from April 11, 2005 through April 30, 2005. This deviation is necessary in order to facilitate electrical repairs at the bridge.

DATES: This deviation is effective from April 11, 2005 through April 30, 2005.

FOR FURTHER INFORMATION CONTACT: Judy Leung-Yee, Project Officer, First Coast Guard District, at (212) 668–7195.

SUPPLEMENTARY INFORMATION: The Old Saybrook-Old Lyme Bridge, at mile 3.4, across the Connecticut River has a vertical clearance in the closed position of 19 feet at mean high water and 22 feet at mean low water. The existing drawbridge operating regulations are listed at 33 CFR 117.205(b).

The owner of the bridge, National Railroad Passenger Corporation (Amtrak), requested a temporary deviation from the drawbridge operating regulations to facilitate scheduled electrical repairs at the bridge.

Under this temporary deviation the Old Saybrook-Old Lyme Bridge shall open on signal at 8 a.m., 10 a.m., 12 p.m., 2 p.m., and 4 p.m. from April 11, 2005 through April 30, 2005. From 4 p.m. to 8 a.m. the draw shall open on signal as soon as practicable for all non-commercial vessels that can not pass under the closed draws, but in no case shall the delay be more than 20 minutes from the time the opening was requested.

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

Dated: April 11, 2005.

Gary Kassof,

Bridge Program Manager, First Coast Guard District.

[FR Doc. 05–7899 Filed 4–19–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD08–05–003]

RIN 1625–AA09

Drawbridge Operation Regulation; Gulf Intracoastal Waterway, Houma, LA

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is changing the regulation governing the operation of the SR 315 (Bayou Dularge) bascule bridge across the Gulf Intracoastal Waterway, mile 59.9 west of Harvey Lock, in Houma, Louisiana. An increase in traffic during the noontime time period facilitated a request to allow the bridge to remain closed to navigation for two (2), 30-minute periods in the middle of the day. These closures will allow local workers to transit the area with minimal delays during the noontime lunch period.

DATES: This rule is effective May 20, 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 [CGD08–05–003] and are available for inspection or copying at the office of the Eighth Coast Guard District, Bridge Administration Branch, 501 Magazine Street, New Orleans, Louisiana 70130–3396, between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The Bridge Administration Branch maintains the public docket for this rulemaking.

FOR FURTHER INFORMATION CONTACT: Mr. David Frank, Bridge Administration Branch, at (504) 589–2965.

SUPPLEMENTARY INFORMATION:

Regulatory History

On January 28, 2005, we published a notice of proposed rulemaking (NPRM) entitled, ''Drawbridge Operation Regulation; Gulf Intracoastal Waterway, Houma, LA,'' in the **Federal Register** (70 FR 4074). We received four letters commenting on the proposed rule. No public meeting was requested, and none was held.

Background and Purpose

The U. S. Coast Guard, at the request of the State of Louisiana, Department of Transportation and Development (LDOTD), and supported by the Terrebonne Parish Council, is modifying

the existing operating schedule of the SR 315 (Bayou Dularge) bascule bridge across the Gulf Intracoastal Waterway, mile 59.9 west of Harvey Lock, in Houma, Terrebonne Parish, Louisiana. The modification of the existing regulations will allow the bridge to remain closed to navigation for two (2), 30-minute periods in the middle of the day to allow for local workers to transit the area with minimal delays during the noontime lunch period.

Currently, the bridge opens on signal; except that, the draw need not open for the passage of vessels Monday through Friday except Federal holidays from 6:30 a.m. to 8:30 a.m. and from 4:30 p.m. to 6 p.m.

Approximately 11,500 vehicles cross the bridge daily, 7% of which cross the bridge during the requested noon closure times. The bridge averages 288 openings a month. The requested two (2), 30-minute closures will delay approximately 35 additional tows a month for a maximum of 30 minutes. The average length of a bridge opening is approximately seven minutes, delaying an average of 92 vehicles per opening during the noontime bridge openings.

Navigation at the site of the bridge consists primarily of tugboats with barges. Alternate routes east and west through the bridge are not readily accessible; however, the bridge, in the closed-to-navigation position provides a vertical clearance of 40 feet above high water, elevation 3.8 feet Mean Sea Level.

Discussion of Comments and Changes

Four letters were received with regards to the NPRM. Oil States Industries in Houma wrote in support of the changes. The Terrebonne Parish Council wrote in support of the changes. The National Resources Conservation Service offered no comments. Trico Marine Operators wrote in support of the changes but suggested that the words ''except Federal holidays'' be eliminated, as many private entities do not observe some or all of these Federal holidays. Based upon this comments, no changes were made to the proposed regulation.

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).

This rule allows vessels ample opportunity to transit this waterway with proper notification before and after the peak vehicular traffic periods. According to the vehicle traffic surveys, the public at large is better served by the additional closure times during the noontime lunch periods.

Small Entities

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

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

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking process.

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 the preamble.

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not cause 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 (32)(e), of the Instruction, from further environmental documentation. This final rule involves modifying the existing drawbridge operation regulation for a benefit of all modes of transportation. It will not have any impact on the environment.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

■ For the reasons set out in the preamble, the Coast Guard is amending part 117 of title 33, Code of Federal Regulations as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; Department of Homeland Security Delegation No. 0170.1; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

■ 2. In § 117.451, paragraph (c) is revised to read as follows:

§ 117.451 Gulf Intracoastal Waterway.

* * * * *

(c) The draw of the SR 315 (Bayou Dularge) bridge, mile 59.9 west of Harvey Lock, at Houma, shall open on signal; except that, the draw need not open for the passage of vessels Monday through Friday except Federal holidays from 6:30 a.m. to 8:30 a.m., from 11:45 a.m. to 12:15 p.m., from 12:45 p.m. to 1:15 p.m. and from 4:30 p.m. to 6 p.m.

* * * * *

Dated: April 8, 2005.

R.F. Duncan,

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

[FR Doc. 05–7900 Filed 4–19–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 162

[CGD17–99–002]

RIN 1625–AA23 (Formerly RIN 2115–AF81)

Anchorage Ground; Safety Zone; Speed Limit; Tongass Narrows and Ketchikan, AK

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: This final rule adopts, without changes, the interim rule published on April 7, 2000, which changed the speed limit in Tongass Narrows. This final rule extends the speed limit area northward in Tongass Narrows to Channel Island, allows the take-off and landing of floatplanes, and allows smaller vessels to transit crowded areas to Tongass Narrows more quickly, relieving congestion. This final rule also re-designates the safety zone in Ketchikan Harbor as an anchorage ground. Vessels transiting the anchorage ground, other than those engaged in anchoring evolutions are required to proceed through the anchorage by the most direct route without delay or sudden course change. The new rule makes the final approach, anchoring, and departure of very large passenger vessels, safer for the vessels involved.

DATES: This rule is effective May 20, 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 the docket and are available for inspection or copying at U.S. Coast Guard Marine Safety Office, Juneau, Alaska, telephone 907–463–2470, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LT Gary Koehler, Chief of Port Operations, Marine Safety Office, Juneau, Alaska, 907–463–2470.

SUPPLEMENTARY INFORMATION:

Regulatory History

On March 25, 1999, the Coast Guard published a Notice of Proposed Rulemaking (NPRM) entitled ''Anchorage ground, safety zone, speed limit, Tongass Narrows and Ketchikan, AK'' in the **Federal Register** (64 FR 14414). The Coast Guard received 8 letters, including two petitions, regarding the proposed rule during a 45-day comment period. A public hearing was held on March 26th at the Ted Ferry Civic Center in Ketchikan, AK.

On June 1, 1999 an interim rule was published entitled ''Anchorage Ground, Safety Zone, Speed Limit, Tongass Narrows and Ketchikan, AK'' in the **Federal Register** (64 FR 29554). A correction was issued on June 15, 1999 in the **Federal Register** (64 FR 32103).

On April 7, 2000 a revised interim rule was published entitled ''Anchorage Ground, Safety Zone, Speed Limit, Tongass Narrows and Ketchikan, AK'' in **Federal Register** (65 FR 18242). On October 21, 2003 a Notice to Reopen Comment Period was published in the **Federal Register** (68 FR 60034).

Background and Purpose

During 1999 and 2000 the Coast Guard and the Federal Aviation Administration held a series of public meetings in Ketchikan, Alaska, to assess maritime traffic, congestion, safety, and wake concerns in Tongass Narrows. The individuals and groups represented at these meetings included recreational vessel operators, passenger vessel operators, commercial fishing vessel operators, commercial kayak operators, floatplane operators, charter vessel operators, and local residents.

The Notice of Proposed Rulemaking proposed changes to the seven-knot speed limit on Tongass Narrows. The existing speed limit did not address the needs of floatplane traffic, may have unnecessarily slowed the transits of smaller vessels, and did not apply in the northern portions of Tongass Narrows where traffic congestion and wake from larger vessels had become a concern. The proposed changes extended the speed zone northward to Channel Island, but exempted vessels of 26 feet or less in length.

The Notice of Proposed Rulemaking also proposed to re-designate the safety

zone in Ketchikan Harbor as an anchorage ground. Vessels transiting the anchorage ground other than those engaged in anchoring evolutions would be required to proceed through the anchorage by the most direct route without delay or sudden course changes. The re-designation of the area would reflect its actual use as an anchorage for large passenger vessels. The slow or erratic operation of small vessels in the former safety zone has made it very difficult for large vessels to safely maneuver to and from anchor. The requirement that transiting vessels proceed through the anchorage directly, without delay or sudden course changes, would make the final approach, anchoring, and departure of very large passenger vessels, safer for the vessels involved.

The interim rule published in 1999 revised the safety zone in Ketchikan Harbor as well as the 7-knot speed limit in Tongass Narrows. It re-designated the safety zone in Ketchikan Harbor as an anchorage ground and required transiting vessels, other than those engaged in anchoring evolutions, to proceed through the anchorage by the most direct route without delay or sudden course changes.

The interim rule published in 2000 revised the published 1999 interim rule by extending the speed limit exemption to include all small vessels of 23 feet or less, registered length. This change allowed an increased number of small vessels that create little wake to transit crowded areas of Tongass Narrows more quickly, thereby relieving congestion.

Discussion of Comments and Changes

The Coast Guard received comments from 21 persons regarding the 1999 interim rule. The comments included oral comments made at the August 27th, 1999 public meeting and four letters. No comments were received concerning the anchorage area and this portion of the interim rule remains unchanged. Numerous comments criticized the speed limit exemption for being unnecessarily restrictive. Responses to these comments on the 1999 interim rule are discussed in the following paragraphs.

The most frequent comments addressed the exemption for ''non-commercial open skiffs.'' Of the 21 persons that commented on the 1999 interim rule (several persons commented on multiple aspects), 10 commented on this exemption, stating that the term ''non-commercial, open skiff'' created confusion as to when a vessel was considered ''open'' vice enclosed. The Coast Guard agreed and the term ''non-commercial, open skiff'' was removed.

Nine comments were received concerning the vessel length exemption from the 7-knot speed limit based on vessel length of less than 20 feet. Seven of the comments favored increasing the size of vessels exempted to 26 feet and one favored increasing the size to 25 feet. Two comments favored keeping the size of vessel exempted from the 7-knot speed limit at 20 feet or less. Additionally, five comments favored an exemption for non-displacement hull vessels. The Coast Guard agreed that the 20-foot vessel length exemption could be increased without adversely affecting the safety of the waterway and without causing a significant increase in vessel wakes. However, numerous comments that were received as a result of the notice of proposed rulemaking concerned the impact of any rule that split the charter fishing vessel fleet. Commenters were concerned that such a split would provide an unfair economic advantage to certain portions of the charter fishing vessel fleet. According to data obtained by the Coast Guard from the State of Alaska Commercial Fisheries Entry Commission, there are 167 charter vessels that routinely operate in and around Tongass Narrows. This data, which is depicted in the following table, indicates:

TABLE 1.—NUMBERS OF CHARTER VESSELS THAT ROUTINELY OPERATE ON TONGASS NARROWS

Size of charter/ vessels	Percent of No. of vessels	Total No.
20 feet	15	9
21–23 feet	12	7.2
24–25 feet	18	10.8
26 feet	122	73

Note: This table reflects the adjusted number of charter vessels that are registered as operating on Tongass Narrows. The numbers have been adjusted to remove those vessels that are home ported in areas other than Ketchikan or Metlakatla or that are located at outlying lodges and could not reasonably be expected to participate in the daily charters out of Tongass Narrows (*i.e.* vessels home ported in Craig, AK or operating out of Yes Bay Lodge, etc.) that the length limit for vessels exempted from the seven knot speed limit could be set at 23 feet with the expectation that any economic impacts to the charter fleet would be minimal due to the small number of additional (12) charter vessels exempted from this regulation. The Coast Guard disagreed with the five comments favoring exemption for planning hull vessels from the seven-knot speed limit. An exemption based on hull type would be very difficult to enforce due to the variety of hull types and nomenclature and possible confusion within the maritime community. For this reason, an exemption based on hull type was not instituted. Three persons commented on the southern boundaries of the seven-knot speed limit. One comment stated that the eastern channel boundary should be extended to the south to the Saxman City breakwater. Two persons commented that the western channel boundary should be moved to the south, away from the cable crossing area. The Coast Guard disagreed that the eastern channel boundary should be extended. The eastern channel boundary was moved north in the 1999 interim rule in an effort to minimize the size of the seven-knot zone without increasing the impacts caused by vessel wakes to private property. Vessel transit time for vessels using the east channel has been reduced and there were no reports of wake damage to private property located along the waterway in the east channel. Therefore the eastern channel boundary remained unchanged.

One comment noted that the regulatory marker in the western channel should be located outside the cable crossing area. The published position of the western channel regulatory marker is outside of the charted cable crossing area. The buoy tender that services this buoy has checked the actual location of the regulatory marker. Two comments were received that favored extending the northern boundary of the seven-knot speed zone northward to Channel Island as a way to control wake damage to private and commercial property caused by large vessels transiting this area. The Coast Guard disagreed that the boundary should be extended any further than Tongass Narrows Buoy 9. The overwhelming majority of 129 comments received in 1998 favored a slight extension of the 7-knot speed limit zone but these comments did not support extending the zone as far north as Channel Island. In light of all comments received, the Coast Guard believed that the present northerly boundary of the 7-knot speed limit zone, located at Tongass Narrows Buoy 9, is appropriate and made no changes.

Two comments were received on making the speed limit seasonal to align with the summer tourist season. One facility operator stated that if the rule were made seasonal, it would increase the risk of a large wake parting a line on an oil barge during transfer operations, thereby potentially increasing the chances of an oil spill. During the entire rule making process, the majority of the comments favored the existence of the year round 7-knot rule. The consensus expressed was that if the 7-knot speed limit were seasonal, the risk on the waterway would not be reduced in the

off months and the amount of wake damage to private and commercial property on Tongass Narrows would most likely increase. The Coast Guard agreed that the rule should apply year around and made no changes.

One comment favored the creation of a high-speed traffic corridor through the middle of the waterway. Other commenters felt that creating a high-speed corridor would unreasonably increase the risk to vessels operating on Tongass Narrows. This proposal was not adopted. No comments were received concerning the 2000 interim rule, which revised the 1999 interim rule to reflect the above comments.

Discussion of the Change to the Final Rule

Since no comments were received concerning the proposed revisions to the 1999 interim rule as contained in the 2000 revised interim rule, the final rule shall adopt the language contained in the 2000 revised interim rule. By exempting ''vessels of 23 feet registered length or less,'' the traffic congestion in the affected areas of Tongass Narrows should be eased and the safety of the small vessel operators enhanced. With the exemption for these small vessels, they will be able to depart from, or transit through the congested areas more quickly. This in turn should ease congestion and reduce navigational conflicts that have arisen between slow moving small boats and cruise ships and other large waterway users and will allow them to spend less time on the water during periods of inclement weather. Large wakes should not become a problem as the exemption is still limited to smaller vessels and because Tongass Narrows regularly experiences substantial wave action that is equivalent to the wake from these smaller vessels. The impacts to the charter fleet are considered minimal because the revised interim rule exempts only 12 of 152 charter vessels that are over 20 feet in length. The finale rule retains the 7-knot speed limit for all other vessels except floatplanes and public law enforcement and emergency response vessels.

Regulatory Evaluation

The analysis we conducted in connection with the interim rule remains unchanged, and the Analysis Documentation prepared for the interim rule remains in the docket. This Final 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 (OMB) has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS). Please consult the Regulatory Evaluation provided in the interim rule for further information.

List of Subjects in 33 CFR Part 162

Navigation (water), Waterways.

■ For the reasons discussed in the preamble, the Coast Guard adopts as final without further change the Interim Rule published on June 2, 1999 (64 FR 29554), and corrected on June 15, 1999 (64 FR 32103), and further revised on April 7, 2000 (65 FR 18242).

Dated: April 5, 2005.

David W. Ryan,

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

[FR Doc. 05–7894 Filed 4–19–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD13–05–006]

Security and Safety Zone: Protection of Large Passenger Vessels, Portland, OR

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement.

SUMMARY: The Captain of the Port Portland, OR will begin, on May 5, 2005, enforcing a small area of the greater Large Passenger Vessel Security and Safety Zones that were established in September 2003. The zones provide for the security and safety of large passenger vessels in the navigable waters of Portland, OR and adjacent waters. These security and safety zones will be enforced for passenger cruise ships only and only from the mouth of the Columbia River at buoy 14 upriver to, and including, Astoria, OR, until further notice.

DATES: This notice of enforcement for 33 CFR 165.1318 will be effective commencing May 5, 2005.

FOR FURTHER INFORMATION CONTACT: LT Tad Drozdowski, c/o Captain of the Port Portland, OR 6767 North Basin Avenue Portland, OR 97217 at (503) 240–9301 to obtain information concerning enforcement of this rule.

SUPPLEMENTARY INFORMATION: On September 12, 2003, the Coast Guard published a final rule (68 FR 53677) establishing regulations in 33 CFR 165.1318 for the security and safety of large passenger vessels in the navigable waters of Portland, OR and adjacent waters of Oregon and Washington. These security and safety zones provide for the regulation of vessel traffic in the vicinity of certain large passenger vessels (as defined in § 165.1318 (b)) and exclude persons and vessels from the immediate vicinity of these large passenger vessels.

On May 5, 2005, for passenger cruise ships only, the Captain of the Port, Portland, OR will begin enforcing only the area of the Large Passenger Vessel Safety and Security Zones, which were established in 33 CFR 165.1318, from the mouth of the Columbia River at buoy 14 upriver to, and including, Astoria, OR. Entry into these zones is prohibited unless otherwise exempted or excluded under the final rule or unless authorized by the Captain of the Port or his designee. The Captain of the Port may be assisted by other Federal, State, or local agencies in enforcing this security zone. These security and safety zones will be enforced until further notice.

Dated: April 7, 2005.

Paul D. Jewell,

Captain, U.S. Coast Guard, Captain of the Port, Portland, OR.

[FR Doc. 05–7895 Filed 4–19–05; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[GU122–NBK; FRL–7888–4]

Revisions to the Territory of Guam State Implementation Plan, Update to Materials Incorporated by Reference

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; notice of administrative change.

SUMMARY: EPA is updating the materials submitted by the Territory of Guam that are incorporated by reference (IBR) into the Territory of Guam State Implementation Plan (SIP). The regulations affected by this update have been previously submitted by the territorial agency and approved by EPA. This update affects the SIP materials that are available for public inspection at the Office of the Federal Register (OFR), Office of Air and Radiation Docket and Information, and the Regional Office.

DATES: *Effective Date:* This rule is effective on May 20, 2005.

ADDRESSES: SIP materials which are incorporated by reference into 40 CFR part 52 are available for inspection at the following locations and on line at EPA Region IX's Web site:

Air Division, Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, Room B–102, 1301 Constitution Avenue, NW., (Mail Code 6102T), Washington, DC 20460.

Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

Guam Environmental Protection Agency, 15–6101 Mariner Avenue, Tiyan, Guam 96913.

FOR FURTHER INFORMATION CONTACT: Julie A. Rose, EPA Region IX, (415) 947–4126, *rose.julie@epa.gov.*

SUPPLEMENTARY INFORMATION:

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I. Background

A. State Implementation Plan History and Process.

Each State is required to have a SIP that contains the control measures and strategies that will be used to attain and maintain the national ambient air quality standards (NAAQS). The SIP is extensive, containing such elements as emission inventories, monitoring networks, attainment demonstrations, and enforcement mechanisms. The control measures and strategies must be formally adopted by each State after the public has had an opportunity to comment on them. They are then submitted to EPA as SIP revisions on which EPA must formally act.

Once these control measures are approved by EPA after notice and comment, they are incorporated into the SIP and are identified in Part 52, Approval and Promulgation of Implementation Plans, Title 40 of the Code of Federal Regulations (40 CFR part 52). The actual State regulations which are approved by EPA are not reproduced in their entirety in 40 CFR part 52, but are ''incorporated by reference,'' which means that the citation of a given State regulation with a specific effective date has been approved by EPA. This format allows both EPA and the public to know which measures are contained in a given SIP and insures that the State is enforcing the regulations. It also allows EPA and the public to take enforcement action, should a State not enforce its SIP-approved regulations.

The SIP is a living document that the State can revise as necessary to address the unique air pollution problems in the State. From time to time, therefore, EPA must take action on SIP revisions containing new and/or revised regulations as being part of the SIP. On May 22, 1997 (62 FR 27968), EPA revised the procedures for incorporating by reference federally-approved SIPs, as a result of consultations between EPA and OFR. EPA began the process of developing (1) a revised SIP document for each State that would be incorporated by reference under the provisions of 1 CFR part 51; (2) a revised mechanism for announcing EPA approval of revisions to an applicable SIP and updating both the IBR document and the CFR, and (3) a revised format of the ''Identification of plan'' sections for each applicable subpart to reflect these revised IBR procedures. The description of the revised SIP document, IBR procedures, and ''Identification of plan'' format are discussed in further detail in the May 22, 1997, **Federal Register** document.

B. Content of Revised IBR Document

The new SIP compilations contain the federally-approved portion of regulations submitted by each State agency. These regulations have all been approved by EPA through previous rule making actions in the **Federal Register**. The compilations are stored in hard covered folders and will be updated, usually on an annual basis.

Each compilation contains two parts. Part 1 contains the regulations and Part 2 contains nonregulatory provisions that have been EPA-approved. Each part consists of a table of identifying information for each regulation and each nonregulatory provision. The table of identifying information corresponds to the table of contents published in 40 CFR part 52 for each State and Territory. The Regional EPA Offices have the primary responsibility for ensuring accuracy and updating the compilations. The Region IX EPA Office developed and will maintain the compilation for the Territory of Guam. A copy of the full text of each State's current compilation will also be maintained at the Office of the Federal Register and EPA's Air Docket and Information Center.

C. Revised Format of the ''Identification of Plan'' Section in Subpart AAA

In order to better serve the public, EPA is revising the organization of the ''Identification of plan section'' including additional information that will make it clearer as to what provisions constitute the enforceable elements of the SIP.

The revised Identification of plan section will contain five subsections: (a) Purpose and scope, (b) Incorporation by reference, (c) EPA approved regulations, (d) EPA approved source specific permits, and (e) EPA approved nonregulatory provisions such as transportation control measures, statutory provisions, control strategies, monitoring networks, etc.

D. Enforceability and Legal Effect

All revisions to the applicable SIP become federally enforceable as of the effective date of the revisions to paragraph (c), (d), or (e) of the applicable Identification of plan found in each subpart of 40 CFR part 52. To facilitate enforcement of previously approved SIP provisions and provide a smooth transition to the new SIP processing system, EPA is retaining the original Identification of plan section, previously appearing in the CFR as the first section of part 52 for subpart AAA, Guam.

E. Notice of Administrative Change

Today's rule constitutes a ''housekeeping'' exercise to ensure that all revisions to State programs that have occurred are accurately reflected in 40 CFR part 52. State SIP revisions are controlled by EPA regulations at 40 CFR part 51. When EPA receives a formal SIP revision request, the Agency must publish the proposed revision in the **Federal Register** and provide for public comment before approval.

II. Public Comments

EPA has determined that today's rule falls under the ''good cause'' exemption in section 553(b)(3)(B) of the Administrative Procedures Act (APA) that, upon finding ''good cause,'' authorizes agencies to dispense with public participation; and section 553(d)(3), which allows an agency to make a rule effective immediately (thereby avoiding the 30-day delayed effective date otherwise provided for in the APA). Today's rule simply codifies provisions that are already in effect as a matter of law in Federal and approved state programs. Under section 553 of the APA, an agency may find good cause

where procedures are ''impractical, unnecessary, or contrary to the public interest.'' Public comment is ''unnecessary'' and ''contrary to the public interest'' since the codification only reflects existing law. Immediate notice in the CFR benefits the public by removing outdated citations.

III. Statutory and Executive Order Reviews

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and is therefore not subject to review by the Office of Management and Budget. This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866. Because the agency has made a ''good cause'' finding that this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute as indicated in the Supplementary Information section above, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C 601 *et seq.*), or to sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). In addition, this action does not significantly or uniquely affect small governments or impose a significant intergovernmental mandate, as described in sections 203 and 204 of UMRA. This rule also 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, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it 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 rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant. This rule does not involve technical standards; 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. The rule also does not involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). In issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct, as required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996). EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1998) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order. This rule does not impose an information collection burden under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). EPA's compliance with these statutes and Executive Orders for the underlying rules are discussed in previous actions taken on the State's rules.

B. Submission to Congress and the Comptroller General

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. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. Today's action simply codifies provisions which are already in effect as a matter of law in Federal and approved State programs. 5 U.S.C. 808(2). As stated previously, EPA has made such a good cause finding, including the reasons therefore, and established an effective April 20, 2005. 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**. These corrections to the identification of plan for the Territory of Guam are not a ''major rule'' as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

EPA has also determined that the provisions of section 307(b)(1) of the Clean Air Act pertaining to petitions for judicial review are not applicable to this action. Prior EPA rulemaking actions for each individual component of the Territory of Guam SIP compilation had previously afforded interested parties the opportunity to file a petition for judicial review in the United States Court of Appeals for the appropriate circuit within 60 days of such rulemaking action. Thus, EPA sees no need in this action to reopen the 60-day period for filing such petitions for judicial review for these ''Identification of plan'' reorganization actions for the Territory of Guam.

List of Subjects in 40 CFR Part 52

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

Dated: February 22, 2005.

Jane Diamond,

Acting Regional Administrator.

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

PART 52—[AMENDED]

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

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

Subpart AAA—Guam

§ 52.2670 [Redesignated as § 52.2673]

■ 2. Section 52.2670 is redesignated as § 52.2673 and the Section heading and paragraph (a) are revised to read as follows:

§ 52.2673 Original identification of plan.

(a) This section identified the original ''Implementation Plan for Compliance With the Ambient Air Quality Standards for the Territory of Guam'' and all revisions submitted by the Territory of Guam that were federally approved prior to January 1, 2005.

* * * * *

■ 3. A new § 52.2670 is added to read as follows:

§ 52.2670 Identification of plan.

(a) *Purpose and scope.* This section sets forth the applicable State implementation plan for Guam under section 110 of the Clean Air Act, 42 U.S.C. 7401–7671q and 40 CFR part 51 to meet national ambient air quality standards.

(b) *Incorporation by reference.* (1) Material listed in paragraphs (c) and (d) of this section with an EPA approval date prior to January 1, 2005, was approved for incorporation by reference

by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Material is incorporated as it exists on the date of the approval, and notice of any change in the material will be published in the **Federal Register**. Entries in paragraphs (c) and (d) of this section with EPA approval dates after January 1, 2005, will be incorporated by reference in the next update to the SIP compilation.

(2) EPA Region IX certifies that the rules/regulations provided by EPA in the SIP compilation at the addresses in paragraph (b)(3) of this section are an exact duplicate of the officially promulgated State rules/regulations which have been approved as part of the State implementation plan as of January 1, 2005.

(3) Copies of the materials incorporated by reference may be inspected at the Region IX EPA Office at 75 Hawthorne Street, San Francisco, CA 94105; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 1301 Constitution Avenue, NW., Room B108, Washington, DC; or the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

(c) EPA approved regulations.

TABLE 52.2670.—EPA APPROVED TERRITORY OF GUAM REGULATIONS

State citation	Title/subject	Effective date	EPA approval date	Explanation
Air Pollution Control Standards and Regulations.	Table of Contents	08/08/1973	12/19/1978 43 FR 48638.	
Chapter 01	Definitions (1.1–1.17, 1.20–1.43)	08/24/1979	05/12/1981 46 FR 26303.	
Chapter 02.1–02.2	Ambient Air Quality Standards	08/08/1973	12/19/1978 43 FR 48638.	
Chapter 02.3–02.4	Ambient Air Quality Standards	01/13/1972	05/31/1972 37 FR 10842.	
Chapter 03.01–03.09	Permits Required, etc.	08/24/1979	05/12/1981 46 FR 26303.	
Chapter 03.10, 3.11 and 03.13	Responsibility of the Permit Holder, etc. (for complex sources only).	08/08/1973	12/19/1978 43 FR 48638.	
Chapter 04.1–04.4	Monitoring, Records and Reporting	08/24/1979	05/12/1981 46 FR 26303.	
Chapter 05.1–05.2	Sampling and Testing Methods	01/13/1972	05/31/1972 37 FR 10842.	
Chapter 05.3	Sampling and Testing Methods	08/24/1979	05/12/1981 46 FR 26303.	
Chapter 06.1	Control of Open Burning	01/13/1972	05/31/1972 37 FR 10842.	
Chapter 06.2	Exceptions	08/24/1979	05/12/1981 46 FR 26303.	
Chapter 06.3	Outdoor Cooking Waiver	01/13/1972	05/31/1972 37 FR 10842.	
Chapter 07.1	Control of Particulate Emissions from Process Industries.	08/24/1979	05/12/1981 46 FR 26303.	
Chapter 07.2–07.3	Process Weight	08/08/1973	12/19/1978 43 FR 48638.	
Chapter 07.4–07.5	Process Weight Table	08/24/1979	05/12/1981 46 FR 26303.	
Chapter 08.1–08.2	Control of Fugitive Dust	08/08/1973	12/19/1978 43 FR 48638.	
Chapter 08.3–08.6	Specific Requirements	08/24/1979	05/12/1981 46 FR 26303.	
Chapter 08.8–08.9	Compliance Schedule	08/08/1973	12/19/1978 43 FR 48638.	
Chapter 09.1–09.9	Control of Particulate Emission from Incinerator; Design and Operation.	01/13/1972	05/31/1972 37 FR 10842.	
Chapter 10.1–10.2	Control of Visible Emission of Particulates for Stationary Sources.	08/24/1979	05/12/1981 46 FR 26303.	
Chapter 11.1–11.3	Control of Odors in Ambient Air	01/13/1972	05/31/1972 37 FR 10842.	
Chapter 12.1; 12.2 & 12.4	Air Pollution Emergencies	08/24/1979	05/12/1981 46 FR 26303.	
Chapter 13.1	Control of Sulfur Dioxide Emissions	08/24/1979	05/12/1981 46 FR 26303.	For All Sources except Tanguisson Power Plant Compliance Order for Inductance.
Chapter 13.1	Addendum to 13.1	01/28/1980	05/12/1981 46 26303	
Chapter 13.2	Control of Sulfur Dioxide Emissions	01/13/1972	05/31/1972 37 FR 10842.	For Tanguisson Power Plant only.
Chapter 13.3 & 13.4	Control of Sulfur Dioxide Emissions	08/24/1979	03/06/1980 45 FR 14559.	
Chapter 14.1–14.7	Motor Vehicle Pollution Control	08/24/1979	05/12/1981 46 FR 26303.	

TABLE 52.2670.—EPA APPROVED TERRITORY OF GUAM REGULATIONS—Continued

State citation	Title/subject	Effective date	EPA approval date	Explanation
Chapter 17.1–17.4	Appeal Procedures, Circumvention, Severability, and Effective Date.	12/11/1981	09/30/1982 47 FR 43054.	

(d) EPA approved State source specific requirements.

Name of source	Permit no.	Effective date	EPA approval date	Explanation
none				

(e) [Reserved].

[FR Doc. 05–7806 Filed 4–19–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2005–0092; FRL–7709–3]

Propiconazole; Re-Establishment of Tolerance for Emergency Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation re-establishes a time-limited tolerance for combined residues of the fungicide propiconazole and its metabolites in or on blueberry at 1.0 parts per million (ppm) for an additional 2-1/2 year period. This tolerance will expire and is revoked on December 31, 2007. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of the pesticide on blueberries. Section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA) requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under FIFRA section 18.

DATES: This regulation is effective April 20, 2005. Objections and requests for hearings must be received on or before June 20, 2005.

ADDRESSES To submit a written objection or hearing request follow the detailed instructions as provided in Unit III. of the **SUPPLEMENTARY INFORMATION.** EPA has established a docket for this action under docket identification (ID) number OPP–2005–0092. All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket.* Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Andrea Conrath, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–9356; e-mail address: *conrath.andrea@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111)
- Animal production (NAICS code 112)
- Food manufacturing (NAICS code 311)
- Pesticide manufacturing (NAICS code 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Access Electronic Copies of this Document and Other Related Information?

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

II. Background and Statutory Findings

EPA issued a final rule, published in the **Federal Register** of January 20, 1999 (64 FR 2995) (FRL–6049–8), which announced that on its own initiative under section 408 of the FFDCA, 21 U.S.C. 346a, as amended by the FQPA (Public Law 104–170), it established a time-limited tolerance for the combined residues of propiconazole and its metabolites in or on blueberry at 1.0 ppm, with an expiration date of December 31, 1999. This time-limited tolerance was subsequently extended via a **Federal Register** notice published on March 28, 2002 (67 FR 14866) (FRL–6828–3), which had the effect of extending the time-limited tolerance for blueberry until December 31, 2003. EPA established the tolerance because section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under FIFRA section 18. Such

tolerances can be established without providing notice or period for public comment.

EPA received a request to extend the use of propiconazole on blueberry for this year's growing season due to the continued problems with controlling mummy berry disease (*Monilinia vacinii-corymbosi*) in wild blueberries in Maine, since the cancellation of the fungicide historically used to control this disease. After having reviewed the submission, EPA concurs that emergency conditions exist. EPA has authorized under FIFRA section 18 the use of propiconazole on blueberry for control of mummy berry disease in Maine.

EPA assessed the potential risks presented by residues of propiconazole in or on blueberry. In doing so, EPA considered the safety standard in section 408(b)(2) of the FFDCA, and decided that the necessary tolerance under section 408(l)(6) of the FFDCA would be consistent with the safety standard and with FIFRA section 18. The data and other relevant material have been evaluated and discussed in the final rule published in the **Federal Register** of January 20, 1999 (64 FR 2995) (FRL–6049–8), as well as the final rule published in the **Federal Register** of August 4, 2004 (69 FR 47005) (FRL–7352–1). Based on that data and information considered, the Agency reaffirms that re-establishing the time-limited tolerance will continue to meet the requirements of section 408(l)(6) of the FFDCA. Therefore, the time-limited tolerance is re-established for an additional 2-1/2 year period.

Although the prior blueberry tolerance has expired and was revoked by operation of law on December 31, 2003, under section 408(l)(5) of the FFDCA, residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on blueberry after that date will not be unlawful, provided the pesticide was applied in a manner that was lawful under FIFRA and the application occurred prior to the revocation of the tolerance.

In 2002, the Natural Resource Defense Council and various other parties filed objections with EPA to the time-limited tolerance for propiconazole on blueberries as well as to dozens of other tolerances for 14 pesticides. The objections to the expired blueberry tolerance are now moot. EPA will be issuing a denial of the objections to the propiconazole blueberry tolerance on those grounds in a few weeks in conjunction with its resolution of the objections as to the tolerances for the pesticides not previously addressed. Prior to issuing this tolerance for propiconazole on blueberries, EPA reviewed the substance of the objections as to the prior propiconazole blueberry tolerance and the arguments made therein do not convince EPA that there are safety concerns as to the re-established blueberry tolerance. A full explanation of EPA's analysis of the objections to the propiconazole blueberry tolerance will be included as part of the document responding to the remaining objections.

This action re-establishes a time-limited tolerance for the combined residues of the fungicide propiconazole and its metabolite determined as 2,4-dichlorobenzoic acid and expressed as the parent compound in or on blueberry. This tolerance will expire and is revoked on December 31, 2007. This action is in response to EPA's granting of an emergency exemption under Section 18 authorizing use of the pesticide on blueberries. Although this blueberry tolerance will expire and is revoked by operation of law on December 31, 2007, under section 408(l)(5) of the FFDCA, residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on blueberry after that date will not be unlawful, provided the pesticide was applied in a manner that was lawful under FIFRA and the application occurred prior to the revocation of the tolerance. EPA will take action to revoke this tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

III. Objections and Hearing Requests

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

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

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2005–0092 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before June 20, 2005.

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

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

2. *Copies for the Docket*. In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit III.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in **ADDRESSES**. Mail your copies, identified by docket ID number OPP–2005–0092, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. In person or by courier, bring a copy to the location of the PIRIB described in **ADDRESSES**. You may also send an electronic copy of your request via e-

mail to: *opp-docket@epa.gov*. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

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

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

IV. Statutory and Executive Order Reviews

This final rule establishes a time-limited tolerance under section 408 of the FFDCA. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a FIFRA section 18 petition under section 408 of the FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of the FFDCA. For these same reasons, the Agency has determined that this rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

V. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: April 8, 2005.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

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

PART 180—[AMENDED]

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

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

§ 180.434 [Amended]

■ 2. In § 180.434, amend the item for ''blueberry'' in the table in paragraph (b) by revising the date ''12/31/2003'' to read ''12/31/2007.''

[FR Doc. 05–7736 Filed 4–19–05; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 25

[FCC 04–271, Auction 52]

Auction of Direct Broadcast Satellite Licenses

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission restricts eligibility for the Direct Broadcast Satellite license authorizing use of channels 23 and 24 at the 61.5º W.L. orbit location. Specifically, licensees currently operating satellites at orbit locations capable of providing DBS service to the 50 U.S. states will be prohibited from acquiring, owning, or controlling this license until four years after the award of the initial license.

DATES: Effective December 3, 2004.

FOR FURTHER INFORMATION CONTACT: Diane Conley, Auctions and Spectrum Access Division, Wireless Telecommunications Bureau, (202) 418–0786; Selina Khan, Satellite Division, International Bureau, (202) 418–7282.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Auction of Direct Broadcast Satellite Licenses Order (''*DBS Order*''), released on December 3, 2004. The complete text of the *DBS Order* as well as related Commission documents are 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. The *DBS Order* and related Commission documents may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*. When ordering documents from Qualex, you must provide the appropriate FCC document number (for example, FCC 04–271 for the *DBS Order*). The *DBS Order* and related documents are also available on the Internet at the Commission's Web site: *http://wireless.fcc.gov/auctions/52/*.

I. Introduction

1. In the *DBS Order*, the Commission concludes that eligibility for the Direct Broadcast Satellite (''DBS'') license for channels 23 and 24 at the 61.5º W.L. orbit location, which authorizes use of the last two available channels at an eastern DBS orbit location, should be restricted. Specifically, licensees currently operating satellites at orbit locations capable of providing DBS service to the 50 U.S. states will be prohibited from acquiring, owning, or controlling this license until four years after the award of the initial license. The Commission concludes that such a restriction on eligibility for this license will serve the public interest by helping to promote the development of an additional provider of DBS services.

II. Background

2. The Commission first adopted competitive bidding rules for the DBS service in 1995. Revision of Rules and Policies for the Direct Broadcast Satellite Service, *Report and Order*, 60 FR 65587, December 20, 1995. In 2002, the Commission released Policies and Rules for the Direct Broadcast Satellite Service, *Report and Order*, 67 FR 51110, August 7, 2002, in which it streamlined the regulation of DBS and moved the DBS rules from part 100 to part 25.

3. On March 3, 2003, the Commission issued a public notice announcing an auction of DBS licenses (the *Auction No. 52 Comment Public Notice*, 68 FR 12906, March 18, 2003), in which it sought comment on, *inter alia*, a number of questions regarding whether eligibility restrictions were warranted for any of the four licenses slated to be offered in Auction No. 52.

4. In an Order released on January 15, 2004, the Commission declined to adopt any eligibility restrictions for the three available licenses at the 175° W.L., 166° W.L., and 157° W.L. orbit locations. The Commission deferred the matter of eligibility for the fourth license—the 61.5° W.L. license—to a separate order. Auction of Direct Broadcast Satellite Licenses, *Order*, 69 FR 8965, February 26, 2004. Following the release of that Order, the 61.5° W.L. license was removed from the inventory of Auction No. 52, which was held on July 14, 2004. Pursuant to its delegated authority, the Wireless Telecommunications Bureau will schedule an auction of the 61.5° W.L. license.

III. Discussion

A. Eligibility of DBS Incumbents

5. The Commission concludes that it is appropriate to restrict the eligibility of entities currently operating satellites at orbit locations capable of providing DBS service to the 50 U.S. states, their wholly owned subsidiaries, and entities they control, to acquire, own, or control the license for the two channels at 61.5° W.L. until four years after the award of the initial license. The two channels at 61.5° W.L. are unique because they are the only remaining unassigned DBS channels in the 12 GHz band that are assigned to the United States under the International Telecommunication Union Region 2 Band Plan that can provide service to the eastern continental United States with a sufficiently high look angle that the signal is not blocked by terrestrial obstacles. Because the 61.5° channels are the last two available that can serve all of the eastern United States plus most of the rest of the country, they could be important to increasing the number of options or choices available to subscribers of DBS or multichannel video programming distribution services. Increased choices in the DBS marketplace could yield important public interest benefits, including greater price competition, the development of additional new services, and technological innovation. Enhanced DBS competition has the potential to bring such benefits to consumers both in markets in which DBS operators compete with cable systems and in markets in which they do not. Whether an additional DBS competitor provides a choice of similar programs at a lower price or provides a different group of program options, or other kinds of DBS, broadband and other types of services, consumers will benefit from those increased options.

6. The Commission concludes that it is reasonable to specify four years as the period during which it will not allow any entity operating satellites at DBS orbit locations capable of serving the 50 states to acquire the 61.5° W.L. license because DBS licensees are required to complete construction of their first satellite within four years of authorization. The purpose of the eligibility restriction is to promote the development of an additional DBS provider, and the Commission wishes to assign the 61.5° W.L. license to an entity that will use the license to provide DBS service, not to an entity that will resell the license to a previously ineligible party soon after acquiring it. The best way to ensure that entities do not acquire the license with the intention of reselling it to a previously ineligible party is to prohibit such resale before the construction of the first satellite authorized under the license is completed. Thus, the Commission will require compliance with the four-year milestone before the 61.5° W.L. license may be transferred to a company that is operating at orbit locations capable of providing DBS service to the 50 states.

7. Entities prohibited from acquiring, owning, or controlling the license for the two channels at 61.5° W.L. until four years after the award of the initial license are also prohibited from leasing the subject spectrum during the same time period. Those parties that will be considered to have a controlling interest will be individuals and entities with either *de jure* or *de facto* control of an applicant for this license. *De jure* control is evidenced by holdings of greater than 50 percent of the voting stock of a corporation, or in the case of a partnership, general partnership interests. *De facto* control is determined on a case-by-case basis. Further, for

purposes of the eligibility restriction adopted the Commission will apply the definitions of ''controlling interests'' and ''affiliate'' currently set forth in 47 CFR 1.2110(c)(2) and 47 CFR 1.2110(c)(5).

B. Cable/DBS Cross-Ownership

8. The Commission does not anticipate any significant competitive problems from cable system ownership of the 61.5° W.L. license, and therefore it concludes that it is not appropriate or necessary to restrict cable operators from acquiring this license.

C. Other Issues

9. The Commission finds that it is not in the public interest to avoid mutual exclusivity entirely with respect to the 61.5° W.L. license and therefore 47 U.S.C. 309(j)(6)(E) does not require it to do so.

10. Because the Commission has no evidence before it to suggest that Dominion Video Satellite, Inc. (''Dominion''), would be required to turn over the 61.5° W.L. channels to EchoStar Satellite L.L.C. (''EchoStar'') if it were to win the license for them, Dominion's current lease arrangement with EchoStar should not by itself disqualify Dominion from acquiring the license for the 61.5° W.L. channels. The Commission will review specific allegations that leasing has led to a de facto transfer of control on a case-by-case basis.

IV. Conclusion

11. For the reasons stated above, the Commission concludes that it will further the public interest to prohibit firms currently operating satellites at orbit locations capable of providing DBS service to the 50 U.S. states, as well as their wholly owned subsidiaries and entities they control, from acquiring, owning, or controlling the license for the two channels currently available at the 61.5° W.L. orbit location until four years after the award of the initial license. In addition, the Commission concludes that such entities should be prohibited from leasing these channels during the same period.

V. Report To Congress

12. The Commission has sent a copy of this Order in a report sent to Congress and the General Accounting Office pursuant to the Congressional Review Act, 5 U.S.C. 801(a)(1)(A).

VI. Ordering Clauses

13. Accordingly, *it is ordered* that, pursuant to sections 4(i), 303(r), and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r), and 309(j), entities currently operating satellites at orbit locations capable of providing DBS service to the 50 U.S. states, their wholly owned subsidiaries, and entities they control shall be ineligible to acquire, own, or control the license for Direct Broadcast Satellite channels 23 and 24 at the 61.5° W.L. orbit location for a period beginning with the release date of this Order and ending four years after the date of the issuance of the initial license. Such entities are prohibited from leasing these two channels during the same period.

14. *It is further ordered* that the International Bureau, in awarding the license for Direct Broadcast Satellite channels 23 and 24 at the 61.5° W.L. orbit location, shall place upon it the condition that it may not be transferred or assigned to any entity described in the preceding clause, and this condition shall automatically expire four years after issuance of the license unless it is extended by the Commission.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 05–7716 Filed 4–19–05; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 541

[Docket No. NHTSA–2005–20462]

RIN 2127–AJ52

Federal Motor Vehicle Theft Prevention Standard; Final Listing of Model Year 2006 High-Theft Vehicle Lines

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Final rule.

SUMMARY: This final rule announces NHTSA's determination for model year (MY) 2006 high-theft vehicle lines that are subject to the parts-marking requirements of the Federal motor vehicle theft prevention standard, and high-theft MY 2006 lines that are exempted from the parts-marking requirements because the vehicles are equipped with antitheft devices determined to meet certain statutory criteria pursuant to the statute relating to motor vehicle theft prevention.

DATES: *Effective Date:* The amendment made by this final rule is effective April 20, 2005.

FOR FURTHER INFORMATION CONTACT: Ms. Rosalind Proctor, Consumer Standards Division, Office of International Policy, Fuel Economy and Consumer Programs, NHTSA, 400 Seventh Street, SW., Washington, DC 20590. Ms. Proctor's telephone number is (202) 366–0846. Her fax number is (202) 493–2290.

SUPPLEMENTARY INFORMATION: The Anti Car Theft Act of 1992, Pub. L. 102–519, amended the law relating to the partsmarking of major component parts on designated high-theft vehicle lines and other motor vehicles. The Anti Car Theft Act amended the definition of ''passenger motor vehicle'' in 49 U.S.C. 33101(10) to include a ''multipurpose passenger vehicle or light duty truck when that vehicle or truck is rated at not more than 6,000 pounds gross vehicle weight.'' Since ''passenger motor vehicle'' was previously defined to include passenger cars only, the effect of the Anti Car Theft Act is that certain multipurpose passenger vehicle (MPV) and light-duty truck (LDT) lines may be determined to be high-theft vehicles subject to the Federal motor vehicle theft prevention standard (49 CFR Part 541).

The purpose of the theft prevention standard is to reduce the incidence of motor vehicle theft by facilitating the tracing and recovery of parts from stolen vehicles. The standard seeks to facilitate such tracing by requiring that vehicle identification numbers (VINs), VIN derivative numbers, or other symbols be placed on major component vehicle parts. The theft prevention standard requires motor vehicle manufacturers to inscribe or affix VINs onto covered original equipment major component parts, and to inscribe or affix a symbol identifying the manufacturer and a common symbol identifying the replacement component parts for those original equipment parts, on all vehicle lines selected as high-theft.

The Anti Car Theft Act also amended 49 U.S.C. 33103 to require NHTSA to promulgate a parts-marking standard applicable to major parts installed by manufacturers of ''passenger motor vehicles (other than light duty trucks) in not more than one-half of the lines not designated under 49 U.S.C. 33104 as high-theft lines.'' NHTSA lists each of the selected lines not designated under 49 U.S.C. 33104 as high-theft lines in Appendix B to Part 541. Since section 33103 did not specify marking of replacement parts for below-median lines, the agency does not require marking of replacement parts for these lines. NHTSA published a final rule amending 49 CFR Part 541 to include the definitions of MPV and LDT, and

major component parts. (*See* 59 FR 64164, December 13, 1994.)

49 U.S.C. 33104(a)(3) specifies that NHTSA shall select high-theft vehicle lines, with the agreement of the manufacturer, if possible. Section 33104(d) provides that once a line has been designated as likely high-theft, it remains subject to the theft prevention standard unless that line is exempted under section 33106. Section 33106 provides that a manufacturer may petition to have a high-theft line exempted from the requirements of section 33104, if the line is equipped with an antitheft device as standard equipment. The exemption is granted if NHTSA determines that the antitheft device is likely to be as effective as compliance with the theft prevention standard in reducing and deterring motor vehicle thefts.

The agency annually publishes the names of the lines which were previously listed as high-theft, and the lines which are being listed for the first time and will be subject to the theft prevention standard beginning in a given model year in Appendix A to Part 541. It also identifies in Appendix A–I to Part 541 those lines that are exempted from the theft prevention standard for a given model year under section 33104. Additionally, this listing identifies those lines (except light-duty trucks) in Appendix B to Part 541 that have theft rates below the 1990/1991 median theft rate but are subject to the requirements of this standard under section 33103.

On March 3, 2004, the final listing of high-theft lines for the MY 2005 vehicle lines was published in the **Federal Register** (68 FR 39471). The final listing identified that there were no new vehicle lines that became subject to the theft prevention standard beginning with the 2005 model year.

For MY 2006, there were also no new vehicle lines identified as likely to be high-theft lines, in accordance with the procedures published in 49 CFR Part 542. However, subsequent to the MY 2005 listing, Toyota Motor North America, Inc., (Toyota) notified the agency that the Lexus LX470 vehicle line was found to have a gross vehicle weight rating that exceeded the weight limitation imposed by the theft prevention standard since the beginning of its introduction into the U.S. market. Accordingly, the Toyota Lexus LX470 has been deleted from Appendix A.

The vehicle lines listed as being subject to the parts-marking standard have previously been designated as high-theft lines in accordance with the procedures set forth in 49 CFR Part 542. Under these procedures, manufacturers evaluate new vehicle lines to conclude whether those new lines are likely to be high theft. The manufacturer submits these evaluations and conclusions to the agency, which makes an independent evaluation; and, on a preliminary basis, determines whether the new line should be subject to the parts-marking requirements. NHTSA informs the manufacturer in writing of its evaluations and determinations, together with the factual information considered by the agency in making them. The manufacturer may request the agency to reconsider the preliminary determinations. Within 60 days of the receipt of these requests, the agency makes its final determination. NHTSA informs the manufacturer by letter of these determinations and its response to the request for reconsideration. If there is no request for reconsideration, the agency's determination becomes final 45 days after sending the letter with the preliminary determination. Each of the new lines on the high-theft list has been the subject of a final determination under either 49 U.S.C. 33103 or 33104.

The list of lines that have been exempted by the agency from the parts-marking requirements of Part 541 includes a high-theft line newly exempted in full beginning with MY 2006. The vehicle line newly exempted in full is the Ford Motor Company's (Ford) Thunderbird. The agency granted Ford's petition for an exemption of its Thunderbird carline from the parts-marking requirements of the Federal Motor Vehicle Theft Prevention Standard beginning with the 2006 model year (70 FR 12780, March 15, 2005). The agency also granted Nissan's petition for an exemption of its [confidential nameplate] line from the parts-marking requirements of the Federal Motor Vehicle Theft Prevention Standard beginning with the [confidential] model year (69 FR 59300, October 4, 2004). However, on November 15, 2004, Nissan formally notified the agency of its decision not to use the exemption for this line at this time. Subsequent to publishing the 2005 final rule, Mazda Motor Corporation (Mazda) petitioned the agency for an exemption of the Mazda MX–5 Miata vehicle line from the parts-marking requirements of the Federal Motor Vehicle Theft Prevention Standard. The agency granted Mazda's petition for an exemption of its MX–5 Miata vehicle line beginning with the 2005 model year (69 FR 58592, September 30, 2004).

Subsequent to publishing the 2005 final rule, General Motor's notified the agency of its plans to change the nameplate of the Buick Regal to Buick LaCrosse and the Chevrolet Venture to Chevrolet Uplander beginning with the 2005 model year. General Motors also notified the agency of its plans to change the nameplate for the Buick LeSabre to the Buick Lucerne vehicle line beginning with MY 2006. Accordingly, Appendix A–I has been amended. The vehicle lines listed as being exempt from the standard have previously been exempted in accordance with the procedures of 49 CFR Part 543 and 49 U.S.C. 33106.

Similarly, the low-theft lines listed as being subject to the parts-marking standard have previously been designated in accordance with the procedures set forth in 49 U.S.C. 33103.

Therefore, NHTSA finds for good cause that notice and opportunity for comment on these listings are unnecessary. Further, public comment on the listing of selections and exemptions is not contemplated by 49 U.S.C. Chapter 331.

For the same reasons, since this revised listing only informs the public of previous agency actions and does not impose additional obligations on any party, NHTSA finds for good cause that the amendment made by this notice should be effective as soon as it is published in the **Federal Register**.

Regulatory Impacts

1. Costs and Other Impacts

NHTSA has analyzed this rule and determined that it is not ''significant'' within the meaning of the Department of Transportation's regulatory policies and procedures. The agency has also considered this notice under Executive Order 12866. As already noted, there has been no selections made in this final rule in accordance with the provisions of 49 U.S.C. 33104, and therefore, no manufacturers been informed that its lines are subject to the requirements of 49 CFR Part 541 for MY 2006. Further, this listing does not actually exempt lines from the requirements of 49 CFR Part 541; it only informs the general public of all such previously granted exemptions. Since the only purpose of this final listing is to inform the public of actions for MY 2006 that the agency has already taken, a full regulatory evaluation has not been prepared.

2. Regulatory Flexibility Act

The agency has also considered the effects of this listing under the Regulatory Flexibility Act. I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities. As noted above, the effect of this final rule is simply to inform the public of those lines that are already subject to the requirements of 49 CFR Part 541 for MY

2006. The agency believes that the listing of this information will not have any economic impact on small entities.

3. Environmental Impacts

In accordance with the National Environmental Policy Act of 1969, the agency has considered the environmental impacts of this rule, and determined that it will not have any significant impact on the quality of the human environment.

4. Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this final rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

5. Civil Justice Reform

This final rule does not have a retroactive effect. In accordance with section 33118 when the Theft Prevention Standard is in effect, a State or political subdivision of a State may not have a different motor vehicle theft prevention standard for a motor vehicle or major replacement part. 49 U.S.C. 33117 provides that judicial review of this rule may be obtained pursuant to 49 U.S.C. 32909. Section 32909 does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

List of Subjects in 49 CFR Part 541

Administrative practice and procedure, Labeling, Motor vehicles, Reporting and recordkeeping requirements.

■ In consideration of the foregoing, 49 CFR Part 541 is amended as follows:

PART 541—[AMENDED]

■ 1. The authority citation for Part 541 continues to read as follows:

Authority: 49 U.S.C. 33102–33104 and 33106; delegation of authority at 49 CFR 1.50.

■ 2. In Part 541, Appendices A and A–I are revised. Appendices A and A–I are revised to read as follows:

Appendix A to Part 541—Lines Subject to the Requirements of This Standard

Manufacturer	Subject lines
ALFA ROMEO	Milano 161 and 164.
BMW	Z3, Z8.
CONSULIER	Consulier GTP.
DAEWOO	Korando, Musso (MPV), Nubira (2000–2002).
DAIMLERCHRYSLER	Chrysler Cirrus, Chrysler Fifth Avenue/Newport, Chrysler Laser, Chrysler LeBaron/Town & Country, Chrysler LeBaron GTS, Chrysler's TC, Chrysler New Yorker Fifth Avenue, Chrysler Sebring, Dodge 600, Dodge Aries, Dodge Avenger, Dodge Colt, Dodge Daytona, Dodge Diplomat, Dodge Lancer, Dodge Neon, Dodge Shadow, Dodge Stratus, Dodge Stealth, Eagle Summit, Eagle Talon, Jeep Cherokee (MPV), Jeep Liberty (MPV), Jeep Wrangler (MPV), Plymouth Caravelle, Plymouth Colt, Plymouth Laser, Plymouth Gran Fury, Plymouth Neon, Plymouth Reliant, Plymouth Sundance, and Plymouth Breeze.
FERRARI	Mondial 8, 328.
FORD	Ford Aspire, Ford Escort, Ford Probe, Lincoln Continental, Lincoln Mark, Mercury Capri, Mercury Cougar, Merkur Scorpio, and Merkur XR4Ti.
GENERAL MOTORS	Buick Electra, Buick Reatta, Buick Skylark, Chevrolet Nova, Chevrolet Blazer (MPV), Chevrolet Prizm, Chevrolet S–10 Pickup, Geo Storm, Chevrolet Tracker (MPV), GMC Jimmy (MPV), GMC Sonoma Pickup, Oldsmobile Achieva (1997–1998), Oldsmobile Bravada, Oldsmobile Cutlass, Oldsmobile Cutlass Supreme (1988–1997), Oldsmobile Intrigue, Pontiac Fiero, Saturn Sports Coupe (1991–2002).
HONDA	Accord, CRV (MPV), Odyssey (MPV), Passport, Pilot (MPV), Prelude, S2000, Acura Integra, Acura MDX (MPV), and Acura RSX.
HYUNDAI	Accent, Sonata, Tiburon.
ISUZU	Amigo, Impulse, Rodeo, Rodeo Sport, Stylus, Trooper/Trooper II, VehiCross (MPV).
JAGUAR	XJ.
KIA MOTORS	Optima, Rio, Sephia (1998–2002), Spectra.
LOTUS	Elan.
MASERATI	Biturbo, Quattroporte, 228.
MAZDA	626 (1987–2002), MX–3, MX–6.
MERCEDES-BENZ	190 D, 190 E, 260E (1987–1989), 300 SE (1988–1991), 300 TD (1987), 300 SDL (1987), 300 SEL, 350 SDL (1990–1991), 420 SEL (1987–1991), 560 SEL (1987–1991), 560 SEC (1987–1991), 560 SL.
MITSUBISHI	Cordia, Eclipse, Lancer, Mirage, Montero (MPV), Montero Sport (MPV), Tredia, 3000GT.
NISSAN	240SX, Sentra/200SX, Xterra.
PEUGEOT	405.
PORSCHE	924S.
SUBARU	XT, SVX, Baja, Forester, Legacy Outback (1995–2004).
SUZUKI	Aerio, X90 (MPV), Sidekick (1997–1998), and Vitara/Grand Vitara (MPV).
TOYOTA	Toyota 4-Runner (MPV), Toyota Avalon, Toyota Camry, Toyota Celica, Toyota Corolla/Corolla Sport, Toyota Echo, Toyota Highlander (MPV), Toyota Matrix (MPV), Toyota MR2, Toyota MR2 Spyder, Toyota Prius, Toyota RAV4 (MPV), Toyota Sienna (MPV), Toyota Tercel, Lexus IS300, Lexus RX300 (MPV), Scion xA, Scion xB.
VOLKSWAGEN	Audi Quattro, Volkswagen Scirocco.

Appendix A–I—High-Theft Lines With Antitheft Devices Which are Exempted From the Parts-Marking Requirements of This Standard Pursuant to 49 CFR Part 543

Manufacturer	Subject lines
AUSTIN ROVER	Sterling.
BMW	MINI, X5, Z4, 3 Car Line, 5 Car Line, 6 Car Line, 7 Car Line, 8 Car Line.
DAIMLERCHRYSLER	Jeep Grand Cherokee, Chrysler Conquest, Chrysler Imperial, Chrysler Town and Country MPV.
FORD	Lincoln Town Car, Mustang, Mercury Sable (2001–2004), Mercury Grand Marquis, Taurus (2000–2004), Thunderbird.[1]
GENERAL MOTORS	Buick Lucerne, Buick LeSabre[2], Buick LaCrosse/Century, Buick Park Avenue, Buick Regal/Century[3], Buick Riviera, Cadillac Allante, Cadillac Deville, Cadillac Seville, Chevrolet Corvette, Chevrolet Cavalier, Chevrolet Classic, Chevrolet Impala/Monte Carlo, Chevrolet Lumina, Monte Carlo (1996–1999), Chevrolet Malibu (2001–2003), Chevrolet Uplander, Chevrolet Venture (2002–2004)[4], Oldsmobile Alero, Oldsmobile Aurora, Oldsmobile Toronado, Pontiac Bonneville, Pontiac Grand Am, Pontiac Grand Prix, Pontiac Sunfire.
HONDA	Acura CL, Acura Legend (1991–1996), Acura NSX, Acura RL, Acura SLX, Acura TL, Acura Vigor (1992–1995).
ISUZU	Axiom, Impulse (1987–1991).
JAGUAR	XK.
MAZDA	6, 929, MX–5 Miata[5] RX–7, Millenia.
MERCEDES-BENZ	124 Car Line (the models within this line are): 260E, 300D, 300E, 300CE, 300TE, 400E, 500E, 129 Car Line (1993–2002)–the models within this line are: 300SL, 500SL, 600SL, SL320, SL500, SL600, 202 Car Line (the models within this line are): C220, C230, C280, C36, and C43.
MITSUBISHI	Galant, Starion, and Diamante.
NISSAN	Nissan Altima, Nissan Maxima, Nissan Pathfinder, Nissan 300ZX, Infiniti G35, Infiniti I30, Infiniti J30, Infiniti M30, Infiniti M45, Infiniti QX4, and Infiniti Q45.
PORSCHE	911, 928, 968, 986 Boxster.
SAAB	9–3, 900 (1994–1998), 9000 (1989–1998).
TOYOTA	Toyota Supra, Toyota Cressida, Lexus ES, Lexus GS, Lexus LS, Lexus SC.
VOLKSWAGEN	Audi 5000S, Audi 100/A6, Audi 200/S4/S6, Audi Allroad Quattro (MPV), Audi Cabriolet, Volkswagen Cabrio, Volkswagen Corrado, Volkswagen Golf/GTI, Volkswagen Jetta/Jetta III, Volkswagen Passat.

[1] Granted an exemption from the partsmarking requirements beginning with MY 2006.
[2] The Buick LeSabre was renamed Buick Lucerne beginning with MY 2006.
[3] The Buick Regal/Century was renamed Buick LaCrosse/Century beginning with MY 2005.
[4] The Chevrolet Venture was renamed the Chevrolet Uplander in MY 2005.
[5] Granted an exemption from the partsmarking requirements beginning with MY 2005.

Issued on: April 14, 2005.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 05–7813 Filed 4–19–05; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 229

[Docket No. 030221039–5103–19; I.D. 041205A]

Taking of Marine Mammals Incidental to Commercial Fishing Operations; Atlantic Large Whale Take Reduction Plan (ALWTRP)

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

ACTION: Temporary rule.

SUMMARY: The Assistant Administrator for Fisheries (AA), NOAA, announces temporary restrictions consistent with the requirements of the ALWTRP's implementing regulations. These regulations apply to lobster trap/pot and anchored gillnet fishermen in an area totaling approximately 1,052 square nautical miles (nm^2) (3,608 km^2) in April and 1,235 nm^2 (4,236 km^2) in May, southeast of Chatham, MA, for 15 days. The purpose of this action is to provide protection to an aggregation of northern right whales (right whales).

DATES: Effective beginning at 0001 hours April 22, 2005, through 2400 hours May 6, 2005.

ADDRESSES: Copies of the proposed and final Dynamic Area Management (DAM) rules, Environmental Assessments (EAs), Atlantic Large Whale Take Reduction Team (ALWTRT) meeting summaries, and progress reports on implementation of the ALWTRP may also be obtained by writing Diane Borggaard, NMFS/Northeast Region, One Blackburn Drive, Gloucester, MA 01930.

FOR FURTHER INFORMATION CONTACT: Diane Borggaard, NMFS/Northeast Region, 978–281–9300 x6503; or Kristy Long, NMFS, Office of Protected Resources, 301–713–1401.

SUPPLEMENTARY INFORMATION:

Electronic Access

Several of the background documents for the ALWTRP and the take reduction planning process can be downloaded from the ALWTRP web site at *http://www.nero.noaa.gov/whaletrp/*.

Background

The ALWTRP was developed pursuant to section 118 of the Marine Mammal Protection Act (MMPA) to reduce the incidental mortality and serious injury of three endangered species of whales (right, fin, and humpback) due to incidental interaction with commercial fishing activities. In addition, the measures identified in the ALWTRP would provide conservation benefits to a fourth species (minke), which are neither listed as endangered nor threatened under the Endangered Species Act (ESA). The ALWTRP, implemented through regulations codified at 50 CFR 229.32, relies on a combination of fishing gear modifications and time/area closures to reduce the risk of whales becoming entangled in commercial fishing gear (and potentially suffering serious injury or mortality as a result).

On January 9, 2002, NMFS published the final rule to implement the ALWTRP's DAM program (67 FR 1133). On August 26, 2003, NMFS amended the regulations by publishing a final rule, which specifically identified gear modifications that may be allowed in a DAM zone (68 FR 51195). The DAM program provides specific authority for NMFS to restrict temporarily on an expedited basis the use of lobster trap/pot and anchored gillnet fishing gear in areas north of 40° N. lat. to protect right whales. Under the DAM program, NMFS may: (1) require the removal of all lobster trap/pot and anchored gillnet fishing gear for a 15–day period; (2) allow lobster trap/pot and anchored gillnet fishing within a DAM zone with

gear modifications determined by NMFS to sufficiently reduce the risk of entanglement; and/or (3) issue an alert to fishermen requesting the voluntary removal of all lobster trap/pot and anchored gillnet gear for a 15–day period and asking fishermen not to set any additional gear in the DAM zone during the 15–day period.

A DAM zone is triggered when NMFS receives a reliable report from a qualified individual of three or more right whales sighted within an area (75 nm^2 (139 km^2)) such that right whale density is equal to or greater than 0.04 right whales per nm^2 (1.85 km^2). A qualified individual is an individual ascertained by NMFS to be reasonably able, through training or experience, to identify a right whale. Such individuals include, but are not limited to, NMFS staff, U.S. Coast Guard and Navy personnel trained in whale identification, scientific research survey personnel, whale watch operators and naturalists, and mariners trained in whale species identification through disentanglement training or some other training program deemed adequate by NMFS. A reliable report would be a credible right whale sighting.

On April 5, 2005, an aerial survey reported a sighting of nine right whales in the proximity 41°31′ N. lat. and 69°37′ W. long. This position lies southeast of Chatham, MA. After conducting an investigation, NMFS ascertained that the report came from a qualified individual and determined that the report was reliable. Thus, NMFS has received a reliable report from a qualified individual of the requisite right whale density to trigger the DAM provisions of the ALWTRP.

Once a DAM zone is triggered, NMFS determines whether to impose restrictions on fishing and/or fishing gear in the zone. This determination is based on the following factors, including but not limited to: the location of the DAM zone with respect to other fishery closure areas, weather conditions as they relate to the safety of human life at sea, the type and amount of gear already present in the area, and a review of recent right whale entanglement and mortality data.

NMFS has reviewed the factors and management options noted above relative to the DAM under consideration. As a result of this review, NMFS prohibits lobster trap/pot and anchored gillnet gear in this area during the 15–day restricted period unless it is modified in the manner described in this temporary rule. In April, the DAM zone overlaps SAM West and the Great South Channel Critical Habitat, and is bounded by the following coordinates:

41°45′ N., 69°55.8′ W. (NW Corner)
41°45′ N., 69°33′ W.
41° 40′ N., 69°45′ W.
41°09′ N., 69°14.4′ W.
41°09′ N., 70°07′ W.
41°14.4′ N., 70 07′ W. and follow the Nantucket coastline eastward, northward and then southward to
41°18′ N., 70°07′ W.
41°39.6′ N., 70°07′ W. and follow the Cape Cod coastline eastward and then northward to
41°45′ N., 69°55.8′ W. (NW Corner)

In May, the DAM Zone overlaps SAM East and the Great South Channel Critical Habitat, and is bounded by the following coordinates:

41°52.8′ N., 69°57.5′ W. (NW Corner)
41°52.8′ N., 69°24′ W.
41°48.9′ N., 69°24′ W.
41°40′ N., 69°45′ W.
41°09′ N., 69°14.4′ W.
41°09′ N., 70°07′ W.
41°14.4′ N., 70°07′ W. and follow the Nantucket coastline eastward, northward and then southward to41°18′ N., 70°07′ W.
41°39.6′ N., 70°07′ W. and follow the Cape Cod coastline eastward and then northward back to NW Corner

In addition to those gear modifications currently implemented under the ALWTRP at 50 CFR 229.32, the following gear modifications are required in the DAM zone. If the requirements and exceptions for gear modification in the DAM zone, as described below, differ from other ALWTRP requirements for any overlapping areas and times, then the more restrictive requirements will apply in the DAM zone. Special note for gillnet fisherman: After May 1, a portion of this DAM zone overlaps the Northeast multispecies seasonal Georges Bank Closure Area found at 50 CFR 648.80(g). Due to this closure, sink gillnet gear is prohibited from this portion of the DAM zone during the month of May.

Lobster Trap/Pot Gear

Fishermen utilizing lobster trap/pot gear within the portion of the Northern Nearshore Lobster Waters and Northern Inshore State Lobster Waters that overlap with the DAM zone are required to utilize all of the following gear modifications while the DAM zone is in effect:

1. Groundlines must be made of either sinking or neutrally buoyant line. Floating groundlines are prohibited;
2. All buoy lines must be made of either sinking or neutrally buoyant line, except the bottom portion of the line, which may be a section of floating line not to exceed one-third the overall length of the buoy line;
3. Fishermen are allowed to use two buoy lines per trawl; and
4. A weak link with a maximum breaking strength of 600 lb (272.4 kg) must be placed at all buoys.

Fishermen utilizing lobster trap/pot gear within the portion of the Offshore Lobster Waters Area that overlap with the DAM zone are required to utilize all of the following gear modifications while the DAM zone is in effect:

1. Groundlines must be made of either sinking or neutrally buoyant line. Floating groundlines are prohibited;
2. All buoy lines must be made of either sinking or neutrally buoyant line, except the bottom portion of the line, which may be a section of floating line not to exceed one-third the overall length of the buoy line;
3. Fishermen are allowed to use two buoy lines per trawl; and
4. A weak link with a maximum breaking strength of 1,500 lb (680.4 kg) must be placed at all buoys.

Anchored Gillnet Gear

Fishermen utilizing anchored gillnet gear within the portion of the Other Northeast Gillnet Waters that overlap with the DAM zone are required to utilize all the following gear modifications while the DAM zone is in effect:

1. Groundlines must be made of either sinking or neutrally buoyant line. Floating groundlines are prohibited;
2. All buoy lines must be made of either sinking or neutrally buoyant line, except the bottom portion of the line, which may be a section of floating line not to exceed one-third the overall length of the buoy line;
3. Fishermen are allowed to use two buoy lines per string;
4. Each net panel must have a total of five weak links with a maximum breaking strength of 1,100 lb (498.8 kg). Net panels are typically 50 fathoms (91.4 m) in length, but the weak link requirements would apply to all variations in panel size. These weak links must include three floatline weak links. The placement of the weak links on the floatline must be: one at the center of the net panel and one each as close as possible to each of the bridle ends of the net panel. The remaining two weak links must be placed in the center of each of the up and down lines at the panel ends; and
5. All anchored gillnets, regardless of the number of net panels, must be securely anchored with the holding power of at least a 22–lb (10.0–kg) Danforth-style anchor at each end of the net string.

The restrictions will be in effect beginning at 0001 hours April 22, 2005, through 2400 hours May 6, 2005, unless terminated sooner or extended by NMFS

through another notification in the **Federal Register**.

The restrictions will be announced to state officials, fishermen, ALWTRT members, and other interested parties through e-mail, phone contact, NOAA website, and other appropriate media immediately upon filing with the **Federal Register**.

Classification

In accordance with section 118(f)(9) of the MMPA, the Assistant Administrator (AA) for Fisheries has determined that this action is necessary to implement a take reduction plan to protect North Atlantic right whales.

Environmental Assessments for the DAM program were prepared on December 28, 2001, and August 6, 2003. This action falls within the scope of the analyses of these EAs, which are available from the agency upon request.

NMFS provided prior notice and an opportunity for public comment on the regulations establishing the criteria and procedures for implementing a DAM zone. Providing prior notice and opportunity for comment on this action, pursuant to those regulations, would be impracticable because it would prevent NMFS from executing its functions to protect and reduce serious injury and mortality of endangered right whales. The regulations establishing the DAM program are designed to enable the agency to help protect unexpected concentrations of right whales. In order to meet the goals of the DAM program, the agency needs to be able to create a DAM zone and implement restrictions on fishing gear as soon as possible once the criteria are triggered and NMFS determines that a DAM restricted zone is appropriate. If NMFS were to provide prior notice and an opportunity for public comment upon the creation of a DAM restricted zone, the aggregated right whales would be vulnerable to entanglement which could result in serious injury and mortality. Additionally, the right whales would most likely move on to another location before NMFS could implement the restrictions designed to protect them, thereby rendering the action obsolete. Therefore, pursuant to 5 U.S.C. 553(b)(B), the AA finds that good cause exists to waive prior notice and an opportunity to comment on this action to implement a DAM restricted zone to reduce the risk of entanglement of endangered right whales in commercial lobster trap/pot and anchored gillnet gear as such procedures would be impracticable.

For the same reasons, the AA finds that, under 5 U.S.C. 553(d)(3), good cause exists to waive the 30–day delay in effective date. If NMFS were to delay for 30 days the effective date of this action, the aggregated right whales would be vulnerable to entanglement, which could cause serious injury and mortality. Additionally, right whales would likely move to another location between the time NMFS approved the action creating the DAM restricted zone and the time it went into effect, thereby rendering the action obsolete and ineffective. Nevertheless, NMFS recognizes the need for fishermen to have time to either modify or remove (if not in compliance with the required restrictions) their gear from a DAM zone once one is approved. Thus, NMFS makes this action effective 2 days after the date of publication of this document in the **Federal Register**. NMFS will also endeavor to provide notice of this action to fishermen through other means as soon as the AA approves it, thereby providing approximately 3 additional days of notice while the Office of the **Federal Register** processes the document for publication.

NMFS determined that the regulations establishing the DAM program and actions such as this one taken pursuant to those regulations are consistent to the maximum extent practicable with the enforceable policies of the approved coastal management program of the U.S. Atlantic coastal states. This determination was submitted for review by the responsible state agencies under section 307 of the Coastal Zone Management Act. Following state review of the regulations creating the DAM program, no state disagreed with NMFS' conclusion that the DAM program is consistent to the maximum extent practicable with the enforceable policies of the approved coastal management program for that state.

The DAM program under which NMFS is taking this action contains policies with federalism implications warranting preparation of a federalism assessment under Executive Order 13132. Accordingly, in October 2001 and March 2003, the Assistant Secretary for Intergovernmental and Legislative Affairs, Department of Commerce, provided notice of the DAM program and its amendments to the appropriate elected officials in states to be affected by actions taken pursuant to the DAM program. Federalism issues raised by state officials were addressed in the final rules implementing the DAM program. A copy of the federalism Summary Impact Statement for the final rules is available upon request (**ADDRESSES**).

The rule implementing the DAM program has been determined to be not significant under Executive Order 12866.

Authority: 16 U.S.C. 1361 *et seq.* and 50 CFR 229.32(g)(3)

Dated: April 14, 2005.

Rebecca Lent,

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

[FR Doc. 05–7816 Filed 4–14–05; 4:59 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 70, No. 75
Wednesday, April 20, 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.

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 723

Member Business Loans

AGENCY: National Credit Union Administration (NCUA).

ACTION: Proposed rule with request for comments.

SUMMARY: NCUA proposes to revise its member business loans (MBL) rule to clarify the minimum capital requirements a federally insured corporate credit union (Corporate CU) must meet to make unsecured MBLs to its members other than member credit unions and corporate credit union service organizations (Corporate CUSOs). NCUA also proposes to revise the definition of ''construction or development loan'' to include loans for renovating or developing property owned by a borrower for income-producing purposes and the definition of ''net worth'' to be more consistent with how that phrase is defined in the Federal Credit Union Act (Act) and NCUA's prompt corrective action regulation (PCA). Additionally, NCUA is soliciting comments on how best to amend the MBL rule to enable credit unions to participate more fully in government guaranteed loan programs.

DATES: Comments must be received on or before June 20, 2005.

ADDRESSES: You may submit comments by any of the following methods (Please send comments by one method only):

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- NCUA Web site: *http://www.ncua.gov/RegulationsOpinionsLaws/proposed_regs/proposed_regs. html.* Follow the instructions for submitting comments.
- E-mail: Address to *regcomments@ncua.gov.* Include ''[Your name] Comments on Part 723 Member Business Loans'' in the e-mail subject line.
- Fax: (703) 518–6319. Use the subject line described above for e-mail.
- Mail: Address to Mary Rupp, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.
- Hand Delivery/Courier: Same as mail address.

Public inspection: All public comments are available on the agency's Web site at *http://www.ncua.gov/RegulationsOpinionsLaws/comments* as submitted, except as may not be possible for technical reasons. Public comments will not be edited to remove any identifying or contact information. Paper copies of comments may be inspected in NCUA's law library, at 1775 Duke Street, Alexandria, Virginia 22314, by appointment weekdays between 9 a.m. and 3 p.m. To make an appointment, call (703) 518–6546 or send an e-mail to *OGCMail@ncua.gov.*

FOR FURTHER INFORMATION CONTACT: Frank Kressman, Staff Attorney, at the above address, or telephone: (703) 518–6540.

SUPPLEMENTARY INFORMATION:

A. Background

In addition to making regulatory changes as the need arises, NCUA also reviews all its existing regulations every three years. This review is conducted on a rolling basis so that a third of the regulations are reviewed each year. This helps NCUA update its regulations to address current regulatory concerns. NCUA provides notice to the public of those regulations under review so the public has an opportunity to comment. The following proposed revisions to the MBL rule are the result of this review and comments received on a previous MBL rulemaking.

B. Corporate Credit Union Capital Requirements

MBLs made by Corporate CUs to member credit unions and Corporate CUSOs are exempt from the MBL rule. 12 CFR 704.7(e)(1), (2); 12 CFR part 723. MBLs made by Corporate CUs to other members, however, are subject to the MBL rule. Accordingly, in those instances where the MBL rule applies, a Corporate CU must comply with the rule's collateral and security requirements. 12 CFR 723.7.

For example, one of the conditions a credit union must meet to make unsecured MBLs is to be ''well capitalized as defined by § 702.102(a)(1)'' of the PCA rule. 12 CFR 723.7(c)(1); 12 CFR part 702. The PCA rule, however, does not apply to Corporate CUs. 12 U.S.C. 1790d(m); 12 CFR 702.1(c). Rather, Corporate CUs generally must maintain a minimum capital ratio of four percent or a different minimum capital ratio under special circumstances. 12 CFR 704.3(d), (e). Accordingly, NCUA proposes to amend the MBL rule's capital requirements for unsecured MBLs to accommodate the differences between the more general capital requirements for natural person credit unions and those for Corporate CUs.

C. Definitions

The MBL rule defines the phrase ''net worth'' slightly differently than it is defined in the Act and PCA. 12 U.S.C. 1790d(o)(2); 12 CFR 702.2(f). To avoid confusion, NCUA proposes to revise the definition of ''net worth'' in the MBL rule to be the same as in PCA. The PCA rule's definition of ''net worth'' is an expanded version of the Act's. The PCA and Act definitions both state that secondary capital accounts are counted in the net worth of low income credit unions.

The MBL rule's current definition of ''construction or development loans'' is limited to financing arrangements for *acquiring* property or rights to property to convert it to an income producing purpose. This definition excludes a loan to a borrower, who already owns or has rights to a property, to convert it to or improve it as income producing property. NCUA believes an appropriate test for determining if a loan is a construction or development loan is whether the loan will be used to renovate or otherwise develop a property for an income producing purpose. NCUA does not believe loans for these purposes, the essential nature of which is related to construction or development, should be excluded from the definition of ''construction or development loan'' just because the borrower has already acquired the property or rights to it. Accordingly, NCUA proposes to revise the definition of ''construction or development loans'' as discussed.

D. Government Guaranteed Loan Programs

In October 2004, NCUA amended the MBL rule to permit credit unions to make SBA guaranteed loans under SBA's less restrictive lending requirements instead of under the more restrictive MBL rule. 69 FR 62563 (October 27, 2004). Before issuing the amendment, NCUA reviewed the SBA's loan programs in which credit unions can participate and determined they provide reasonable criteria for credit union participation and compliance within the bounds of safety and soundness. Additionally, NCUA has determined that these SBA programs are ideally suited to the mission of many credit unions to satisfy their members' business loans needs.

NCUA solicited public comment on the amendment before issuing it. A number of commenters suggested NCUA expand the scope of the amendment to include other government guaranteed loan programs. Some commenters specifically named the Farm Service Agency and United States Department of Agriculture loan programs. Others suggested all government guaranteed loan programs be included.

NCUA has made clear it is willing to consider other government guaranteed loan programs as it becomes apparent there is demand for the program among credit unions. Since October 2004, NCUA has learned there may be such demand. Accordingly, NCUA is soliciting comment on how best to broaden the MBL rule to enable credit unions to participate more fully in other government guaranteed loan programs that the current MBL rule might otherwise restrict.

NCUA is interested in comments on whether to broaden the MBL rule in this regard, and, if so, if it is better to expand it to permit only specifically identified programs or to permit all such programs. NCUA is particularly interested in comments that address the benefits of specific programs and any safety and soundness or operational concerns associated with them.

Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact a proposed rule may have on a substantial number of small credit unions (those under ten million dollars in assets). This rule clarifies capital requirements for making unsecured MBLs, revises definitions for consistency and practical application and solicits comments on expanding the MBL rule regarding government guaranteed loan programs, without imposing any additional regulatory burden. This rule would not have a significant economic impact on a substantial number of small credit unions, and, therefore, a regulatory flexibility analysis is not required.

Paperwork Reduction Act

NCUA has determined that the proposed rule would not increase paperwork requirements under the Paperwork Reduction Act of 1995 and regulations of the Office of Management and Budget.

Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. In adherence to fundamental federalism principles, NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. The proposed rule would not have substantial direct effects on the states, on the connection between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. NCUA has determined that this proposed rule does not constitute a policy that has federalism implications for purposes of the executive order.

The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families

The NCUA has determined that this proposed rule would not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999, Pub. L. 105–277, 112 Stat. 2681 (1998).

Agency Regulatory Goal

NCUA's goal is to promulgate clear and understandable regulations that impose minimal regulatory burden. We request your comments on whether the proposed rule is understandable and minimally intrusive.

List of Subjects in 12 CFR Part 723

Credit, Credit unions, Reporting and recordkeeping requirements.

By the National Credit Union Administration Board on April 14, 2005.

Mary F. Rupp,

Secretary of the Board.

For the reasons stated above, NCUA proposes to amend 12 CFR part 723 as follows:

PART 723—MEMBER BUSINESS LOANS

1. The authority citation for part 723 continues to read as follows:

Authority: 12 U.S.C. 1756, 1757, 1757A, 1766, 1785, 1789.

2. Revise § 723.7(c)(1) to read as follows:

§ 723.7 What are the collateral and security requirements?

* * * * *

(c) * * *

(1) You are a natural person credit union that is well capitalized as defined by § 702.102(a)(1) of this chapter or you are a corporate credit union that maintains a minimum capital ratio as required by § 704.3(d) of this chapter or a different ratio as permitted under § 704.3(e) of this chapter;

* * * * *

3. Revise the definitions of ''Construction or development loan'' and ''Net worth'' in § 723.21 to read as follows:

§ 723.21 Definitions.

* * * * *

Construction or development loan is a financing arrangement for acquiring property or rights to property, including land or structures, with the intent to convert it to or improve it as income-producing property such as residential housing for rental or sale; commercial use; industrial use; or similar uses. Construction or development loan also is a financing arrangement for renovating or otherwise developing property, including land or structures, already owned by the borrower or that the borrower already has rights to, with the intent to convert it to or improve it as income-producing property such as residential housing for rental or sale; commercial use; industrial use; or similar uses.

* * * * *

Net worth means the retained earnings balance of the credit union at quarter end as determined under generally accepted accounting principles. Retained earnings consists of undivided earnings, regular reserves, and any other appropriations designated by management or regulatory authorities. This means that only undivided earnings and appropriations of undivided earnings are included in net worth. For low income-designated credit unions, net worth also includes secondary capital accounts that are uninsured and subordinate to all other claims, including claims of creditors, shareholders and the NCUSIF. For any credit union, net worth does not include

the allowance for loan and lease losses account.

[FR Doc. 05–7835 Filed 4–19–05; 8:45 am]

BILLING CODE 7535–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD01–05–020]

RIN 1625–AA09

Drawbridge Operation Regulations; Dorchester Bay, MA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to temporarily change the drawbridge operating regulations governing the operation of the William T. Morrisey Boulevard Bridge, at mile 0.0, across Dorchester Bay at Boston, Massachusetts. This change to the drawbridge operation regulations would allow the bridge to remain in the closed position from November 1, 2005 through May 10, 2006. This action is necessary to facilitate necessary maintenance at the bridge.

DATES: Comments must reach the Coast Guard on or before June 20, 2005.

ADDRESSES: You may mail comments to Commander (obr), First Coast Guard District Bridge Branch, 408 Atlantic Avenue, Boston, Massachusetts 02110, or deliver them to the same address between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (617) 223–8364. The First Coast Guard District, Bridge Branch, maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at the First Coast Guard District, Bridge Branch, 7 a.m. to 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. John McDonald, Project Officer, First Coast Guard District, (617) 223–8364.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments or related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD01–05–020), 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 if they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to the First Coast Guard District, Bridge Branch, at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The William T. Morrisey Boulevard Bridge, at mile 0.0 across Dorchester Bay, has a vertical clearance of 12 feet at mean high water and 22 feet at mean low water. The existing regulations at 33 CFR 117.597 require the draw to open on signal from April 16 through October 14, except that the draw need not open for vessel traffic from 7:30 a.m. to 9 a.m. and from 4:30 p.m. to 6 p.m. except on Saturdays, Sundays, or holidays observed in the locality. From October 15 through April 15, the draw shall open on signal if at least twenty-four hours notice is given.

The bridge owner, the Department of Conservation and Recreation (DCR), asked the Coast Guard to temporarily change the drawbridge operation regulations to allow the bridge to remain in the closed position from November 1, 2005 through May 10, 2006, to facilitate electrical rehabilitation construction at the bridge.

Discussion of Proposed Rule

This proposed change would suspend the existing drawbridge operation regulations, listed at 33 CFR 117.597, and add a temporary regulation that allows the bridge to remain in the closed position from November 1, 2005 through May 10, 2006, to facilitate electrical rehabilitation construction at the bridge.

Regulatory Evaluation

This proposed 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 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 proposed rule to be so minimal that a full Regulatory Evaluation, under the regulatory policies and procedures of DHS is unnecessary.

This conclusion is based on the fact that the only known users of the waterway, the Dorchester Yacht Club, will not be affected by this rule during the time the bridge is closed.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this proposed 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 section 5 U.S.C. 605(b), that this proposed rule would not have a significant economic impact on a substantial number of small entities.

This conclusion is based on the fact that the only known users of the waterway, the Dorchester Yacht Club, will not be affected by this rule during the time the bridge is closed.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. 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 us in writing at, Commander (obr), First Coast Guard District, Bridge Branch, 408 Atlantic

Avenue, Boston, MA 02110–3350. The telephone number is (617) 223–8364. 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.

Collection of Information

This proposed 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 proposed 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 proposed 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 proposed rule would not effect a taking of private property or otherwise have taking implications under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

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

Environment

We have analyzed this proposed rule under Commandant Instruction M16475.1D, 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 (32)(e), of the Instruction, from further environment documentation because it has been determined that the promulgation of operating regulations or procedures for drawbridges are categorically excluded.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

For the reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; Department of Homeland Security Delegation No. 0170.1; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

§ 117.597 [Suspended]

2. From November 1, 2005 through May 10, 2006, § 117.597 is suspended.

3. From November 1, 2005 through May 10, 2006, § 117.T602 is temporarily added to read as follows:

§ 117.T602 Dorchester Bay.

The draw of the William T. Morrisey Boulevard Bridge, mile 0.0, at Boston, need not open for the passage of vessel traffic from November 1, 2005 through May 10, 2006.

Dated: April 11, 2005.

David P. Peskoske,

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

[FR Doc. 05–7893 Filed 4–19–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD01–05–034]

RIN 1625–AA09

Drawbridge Operation Regulations; Kennebec River, ME

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to temporarily change the drawbridge operating regulations governing the operation of the Carlton Bridge, mile 14.0, across the Kennebec River between Bath and Woolwich, Maine. This proposed rule would allow the bridge to open on signal every three hours at 6 a.m., 9 a.m., 12 p.m., 3 p.m., and 6 p.m., Monday through Saturday, from July 5 through December 17, 2005, and again

from April 1 through June 30, 2006, to facilitate rehabilitation construction at the bridge. This rule also would allow five three-day bridge closures in September and October of 2005. Vessels that can pass under the bridge without a bridge opening may do so at all times.

DATES: Comments and related material must reach the Coast Guard on or before May 20, 2005.

ADDRESSES: You may mail comments and related material to Commander (obr), First Coast Guard District Bridge Branch, 408 Atlantic Avenue, Boston, Massachusetts, 02110, or deliver them to the same address between 6:30 a.m. and 3 p.m., Monday through Friday, except, Federal holidays. The telephone number is (617) 223–8364. The First Coast Guard District, Bridge Branch, maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at the First Coast Guard District, Bridge Branch, 7 a.m. to 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: John McDonald, Project Officer, First Coast Guard District, (617) 223–8364.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments or related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD01–05–034), 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 if they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to the First Coast Guard District, Bridge Branch, at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register.**

Background

The Carlton Bridge has a vertical clearance of 10 feet at mean high water and 16 feet at mean low water in the closed position. The existing drawbridge operation regulations are listed at 33 CFR 117.525.

The owner of the bridge, Maine Department of Transportation (MDOT), requested a temporary change to the drawbridge operation regulations to allow the bridge to open on signal every three hours at 6 a.m., 9 a.m., 12 p.m., 3 p.m., and 6 p.m., only, Monday through Saturday, from July 5 through December 17, 2005, and again from April 1 through June 30, 2006, to facilitate rehabilitation construction at the bridge.

From 6 p.m. through 6 a.m. the draw would open on signal after at least a two-hour notice is given by calling the number posted at the bridge.

The bridge would open on signal for Labor Day weekend, Friday, September 2, 2005 through Monday, September 5, 2005, from 8 a.m. to 5 p.m., and from 5 p.m. through 8 a.m., the draw would open after a two-hour notice is given by calling the number posted at the bridge.

From December 18, 2005 through March 31, 2006, the bridge would operate in accordance with its normal winter schedule.

In addition, this proposed rule would allow five three-day bridge closures as follows: September 7 through September 9; September 20 through September 22; October 4 through October 6; October 18 through October 20; and November 1 through November 3, 2005.

Discussion of Proposal

This proposed change would suspend § 117.525(a) and temporarily add a new paragraph (c).

Under the new paragraph the Carlton Bridge would open on signal every three hours at 6 a.m., 9 a.m., 12 p.m., 3 p.m., and 6 p.m., only, Monday through Saturday, from July 5 through December 17, 2005, and again from April 1 through June 30, 2006. From 6 p.m. through 6 a.m. the draw shall open on signal after at least a two-hour notice is given by calling the number posted at the bridge.

The bridge would open on signal for Labor Day weekend, Friday, September 2, 2005 through Monday, September 5, 2005, from 8 a.m. to 5 p.m. and from 5 p.m. through 8 a.m. the draw would open after a two-hour notice is given by calling the number posted at the bridge.

From December 18, 2005 through March 31, 2006, the bridge would operate in accordance with its existing winter schedule, which has been in effect since 2001.

In addition, the draw would also be allowed to remain closed for five three-day closures as follows: September 7 through September 9; September 20 through September 22; October 4 through October 6; October 18 through October 20; and November 1 through November 3, 2005.

Regulatory Evaluation

This proposed 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 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.

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation, under the regulatory policies and procedures of DHS, is unnecessary.

This conclusion is based on the fact that the bridge will continue to open on signal for all vessel traffic at three-hour intervals from 6 a.m. to 6 p.m.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this proposed 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 section 5 U.S.C. 605(b), that this proposed rule would not have a significant economic impact on a substantial number of small entities.

This conclusion is based on the fact that the bridge will continue to open on signal for all vessel traffic at three-hour intervals from 6 a.m. to 6 p.m.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Collection of Information

This proposed 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 proposed 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 proposed 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 proposed rule would not effect a taking of private property or otherwise have taking implications under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed 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 proposed 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 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 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. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs 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 proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this proposed rule under Commandant Instruction M16475.1D, 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 (32)(e), of the Instruction, from further environment documentation because it has been determined that the promulgation of operating regulations or procedures for drawbridges are categorically excluded.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

For the reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; Department of Homeland Security Delegation No. 0170; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. From July 5, 2005 through June 30, 2006, § 117.525(a) is suspended and a new paragraph (c) is added to read as follows:

§ 117.525 Kennebec River

* * * * *

(c) (1) The Carlton Bridge, mile 14.0, shall open on signal at 6 a.m., 9 a.m., 12 p.m., 3 p.m., and 6 p.m., Monday through Saturday, from July 5, 2005 through December 17, 2005, and from April 1, 2006 through June 30, 2006. From 6 p.m. through 6 a.m. the draw shall open on signal after at least a two-hour notice is given by calling the number posted at the bridge.

(2) The draw shall open on signal on Labor Day weekend, Friday, September 2, 2005 through Monday, September 5, 2005, from 8 a.m. to 5 p.m., and from 5 p.m. through 8 a.m., the draw shall open after a two-hour notice is given by calling the number posted at the bridge.

(3) From December 18, 2005 through March 31, 2006, the bridge shall open on signal, except that, from 5 p.m. to 8 a.m., the draw shall open on signal after a twenty-four hour notice is given and from 8 a.m. to 5 p.m., on Saturday and Sunday, after an eight-hour notice is given by calling the number posted at the bridge.

(4) The draw of the Carlton Bridge may remain in the closed position for five three-day closure periods as follows: September 7 through September 9; September 20 through September 22; October 4 through October 6; October 18 through October 20; and November 1 through November 3, 2005.

Dated: April 7, 2005.

John L. Grenier,

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

[FR Doc. 05–7892 Filed 4–19–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD01–05–025]

RIN 1625–AA87

Security Zone; New York Marine Inspection Zone and Captain of the Port Zone, New York Harbor

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish temporary security zones in portions of the waters around Stapleton Homeport Pier in Upper New York Bay, as well as the New York City Passenger Ship Terminal and Intrepid Museum in the Hudson River and around each participating Fleet Week vessel. This action is necessary to safeguard Naval vessels, Coast Guard vessels, and critical port infrastructure from sabotage, subversive act, or other threats. This rule does not apply to any vessel engaged in the enforcement of these security zones, other law enforcement, port security, or search and rescue activity. This rule would prohibit entry into or movement within these security zones without authorization from the Captain of the Port of New York.

DATES: Comments and related material must reach the Coast Guard on or before May 16, 2005.

ADDRESSES: You may mail comments and related material to Lieutenant Junior Grade Scott White, Coast Guard Activities New York Waterways Management Division, 212 Coast Guard Drive, room 310, Staten Island, NY 10301. Coast Guard Activities New York Waterways Management Division maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at Coast Guard Activities New York Waterways Management Division between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade Scott White, Waterways Management Division, Coast Guard Activities New York at (718) 354–4228.

SUPPLEMENTARY INFORMATION:

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 [CGD01–05–025], 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 than8½ by 11 inches, suitable for copying. If you would like to know that your submission reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to Coast Guard Activities New York at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a separate notice in the **Federal Register**.

Background and Purpose

Following the terrorist attacks in New York on September 11, 2001, the Ports of New York and New Jersey have been in a heightened state of threat awareness and port security readiness. Highly publicized events that occur in concentrated areas within the greater New York Metropolitan region have resulted in the elevation of Maritime Security (MARSEC) conditions and an increase in port security measures to abate credible and potential threats against the maritime community and public at large.

Fleet Week 2005 will bring a large composition of U.S. and foreign military vessels to the Port of New York for the purpose of promoting military and naval heritage. The event allows for public access to these vessels as they are moored at the port facilities of the New York City Passenger Ship Terminal, Intrepid Museum, and Stapleton Homeport Pier. Such a high profile event with large a large number of people could present a potential target for terrorist or subversive actions.

The establishment of these security zones is necessary to protect participating vessels, regional infrastructure, and the public from waterborne attack and subversive activity.

Discussion of Proposed Rule

The Coast Guard is proposing the establishment of the following temporary security zones: all waters of Upper New York Bay within approximately 400 yards of the Stapleton Homeport Pier in Staten Island, NY; all waters of the Hudson River within approximately 400 yards of Piers 86, 88, 90, and 92 at the New York City Passenger Ship Terminal and Intrepid Museum, in Manhattan, NY; and a moving security zone in all waters of the Port of New York/New Jersey within a 500-yard radius of each participating vessel in the 2005 Fleet Week Parade of Ships between Ambrose Light (LLNR 720) and the George Washington Bridge (river mile 11.0) on the Hudson River. Additionally, these temporary moving security zones would be effective during any time that a participating Fleet Week 2005 vessel is underway, including, but not limited to, outbound transits, shifting of mooring or anchorage locations, and special dignitary voyages.

Hence, with this proposed rule, no vessel or person would be allowed within 500 yards of any Fleet Week 2005 participating vessel unless authorized by the Captain of the Port or the designated on-scene-patrol personnel. These personnel comprise commissioned, warrant, and petty officers of the Coast Guard.

The Captain of the Port would also authorize other Federal, State, or local law enforcement vessels to enter the security zones that would be established by this rule. The Captain of the Port will seek the enforcement assistance of other Federal, State, or local law enforcement vessels to assist in ensuring the enforcement of this rule.

Upon being hailed by the U.S. Coast Guard or other designated on-scene patrol personnel, Federal, State, or local law enforcement vessel by siren, radio, flashing light, or other means, the operator of a vessel must proceed as directed.

The zones described above are necessary to protect the Naval, foreign flagged, and Coast Guard vessels participating in Fleet Week 2005, the Stapleton Homeport Pier, the New York City Passenger Ship Terminal; the Intrepid Museum, others in the maritime community, and the surrounding communities from subversive or terrorist attack against the vessels and piers that could potentially cause serious negative impact to vessels, the port, or the environment and result in numerous casualties.

This proposed rule would not create a security zone around vessels engaged in the enforcement of these security zones, other law enforcement, port security, or search and rescue activity. The Captain of the Port does not expect

this rule to interfere with the transit of any vessels through the waterways adjacent to each facility.

No person or vessel may enter or remain in a prescribed security zone at any time without the permission of the Captain of the Port, New York. Each person or vessel in a security zone must obey any direction or order of the Captain of the Port. The Captain of the Port may take possession and control of any vessel in a security zone and/or remove any person, vessel, article or thing from a security zone.

Any violation of any security zone (established herein) is punishable by, among others, civil penalties where each day of a continuing violation is a separate violation, criminal penalties, in rem liability against the offending vessel, and license sanctions. This regulation is established under the authority contained in 50 U.S.C. 191, 33 U.S.C. 1223, 1225 and 1226.

Regulatory Evaluation

This proposed 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 proposed rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. This conclusion is based on the fact that the zones are temporary in nature; the zones implicate relatively small portions of the waterway; and vessels will be able to transit around the security zones at all times or after a limited wait while the parade passes their location.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed 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 proposed rule would not have a significant economic impact on a substantial number of small entities. This rule will affect 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 Upper New York Bay and the Hudson River in which entry will be prohibited by these security zones.

These security zones will not have a significant economic impact on a substantial number of small entities for the following reasons: The zones are temporary in nature; the zones implicate relatively small portions of the waterways; and vessels will be able to transit around the security zones at all times or after waiting for a limited duration while the parade column passes their location.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Lieutenant Junior Grade Scott White, Waterways Management Division, Coast Guard Activities New York at (718) 354–4228. 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.

Collection of Information

This proposed 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 proposed 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 proposed 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 proposed rule would 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 proposed 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 proposed 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 proposed 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. We invite your comments on how this proposed rule might impact tribal governments, even if that impact may not constitute a ''tribal implication'' under the Order.

Energy Effects

We have analyzed this proposed 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 proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this proposed 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 made a preliminary determination 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, we believe that this rule should be categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation. A preliminary ''Environmental Analysis Check List'' is available in the docket where indicated under **ADDRESSES**. Comments on this section will be considered before we make the final decision on whether the rule should be categorically excluded from further environmental review.

List of Subjects in 33 CFR Part 165

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

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

2. From 8 a.m., May 25, 2005, to 8 p.m. June 1, 2005, add temporary § 165.T01–053 to read as follows:

§ 165.T01–053 Security Zones; New York Marine Inspection Zone and Captain of the Port Zone.

(a) *Location.* The following waters within the New York Marine Inspection Zone and Captain of the Port Zone are security zones:

(1) *Stapleton Homeport Pier, Upper New York Bay, Staten Island, NY.* All waters of Upper New York Bay within approximately 400 yards of the Stapleton Homeport Pier bound by the following approximate positions: 40°38′00.6″ N, 074°04′22.3″ W, thence to 40°37′51.1″ N, 074°03′46.5″ W, thence to 40°37′27.5″ N, 074°03′54.5″ W, thence to 40°37′33.7″ N, 074°04′20.8″ W, (NAD 1983) thence along the shoreline to the point of origin.

(2) *New York City Passenger Ship Terminal and Intrepid Museum, Hudson River, Manhattan, NY.* All waters of the Hudson River within approximately 400 yards of Piers 86, 88, 90, and 92 bound by the following points: from the northeast corner of Pier 81 where it intersects the seawall, thence to approximate position 40°45′51.3″ N, 074°00′30.2″ W, thence to 40°46′27.7″ N, 074°00′04.9″ W, thence to the southeast corner of Pier 97 where it intersects the seawall.

(3) *2005 Fleet Week Parade of Ships and Navigational Periods, Port of New York/New Jersey.* All waters of the Port of New York/New Jersey within a 500-yard radius of each vessel participating in 2005 Fleet Week events while underway between Ambrose Light (LLNR 720) and the George Washington Bridge (river mile 11.0) on the Hudson River.

(b) *Enforcement period.* This section will be enforced from 8 a.m. on Wednesday, May 25, 2005, until 8 p.m. on Wednesday, June 1, 2005.

(c) *Regulations.* (1) The general regulations contained in 33 CFR 165.33 apply.

(2) No vessel or person is allowed within 500 yards of a vessel protected by the security zone described in Paragraph (a)(3), unless authorized by the Captain of the Port or the designated on-scene-patrol personnel.

(3) All persons and vessels must comply with the instructions of the Coast Guard Captain of the Port or the designated on-scene-patrol personnel. These personnel comprise commissioned, warrant, and petty officers of the Coast Guard, as well as all uniformed Federal, State, and local law enforcement personnel assisting with event patrol. Upon being hailed by a U.S. Coast Guard or other Federal, State, or local law enforcement vessel by siren, radio, flashing light, or other means, the operator of a vessel must proceed as directed.

Dated: April 5, 2005.

Glenn A. Wiltshire,

Captain, U.S. Coast Guard, Captain of the Port, New York.

[FR Doc. 05–7902 Filed 4–19–05; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[RO4–OAR–2005–GA–0002; RO4–OAR–2005–GA–0003; FRL–7901–4]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Georgia, Redesignation of Atlanta 1-Hour Severe Ozone Nonattainment Area to Attainment for Ozone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On February 1, 2005, the State of Georgia, through the Georgia Environmental Protection Division (EPD), submitted; a request to redesignate the 1-hour ozone National Ambient Air Quality Standard (NAAQS) nonattainment area of Atlanta, Georgia, to attainment; and a request for EPA approval of a Georgia State Implementation Plan (SIP) revision containing a 10-year maintenance plan for the 13-county Atlanta area, including new motor vehicle emission budgets (MVEBs) for the year 2015. In addition, Georgia has requested that EPA make a determination that certain Clean Air Act (CAA or Act) SIP submittal requirements related to attainment demonstrations and reasonable further progress are not applicable requirements for the purposes of this redesignation request because the Atlanta area has attained the 1-hour ozone NAAQS based on ambient air monitoring data for the 3-

year period including the years 2002, 2003, and 2004.

EPA is proposing to determine that the Atlanta area has attained the 1-hour ozone NAAQS. This proposal is based on three years of complete, quality-assured ambient air quality monitoring data for 2002 through 2004 ozone seasons. On the basis of this proposal, EPA is also proposing to determine that certain attainment demonstration and reasonable further progress requirements along with other related requirements of part D of Title I of the CAA are not applicable to the Atlanta area.

EPA is also proposing approval of both the 1-hour ozone redesignation request and the 10-year maintenance plan SIP revision, including the new 2015 MVEBs. EPA's proposed approval of the 1-hour ozone redesignation request is based on its determination that the Atlanta area has met the five criteria for redesignation to attainment specified in the CAA, including a demonstration that the Atlanta area has attained the 1-hour ozone NAAQS. EPA is proposing approval of the 10-year maintenance plan SIP revision, including the new 2015 MVEBs, because EPA has determined that the plan complies with the requirements of Section 175A of the Act.

Finally, in this proposed rulemaking, EPA is providing information on the status of its transportation conformity adequacy determination for new motor vehicle emission budgets (MVEB) for the year 2015 that are contained Georgia's the 10-year 1-hour ozone maintenance plan SIP submittal for the Atlanta area.

DATES: Written comments must be received on or before May 20, 2005.

ADDRESSES: Submit your comments, identified by Regional Material in EDocket (RME) ID No. RO4–OAR–2005–GA–0002; RO4–OAR–2005–GA–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 Website: 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: martin.scott@epa.gov.*

4. *Fax:* 404–562–9019.

5. *Mail:* ''RO4–OAR–2005–GA–0002; RO4–OAR–2005–GA–0003'', Regulatory Development Section, Air Planning 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: Scott M. Martin, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division 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 to 4:30, excluding federal holidays.

Instructions: Direct your comments to RME ID No. RO4–OAR–2005–GA–0002; RO4–OAR–2005–GA–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 website and the federal regulations.gov website 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 Regulatory Development Section, Air Planning 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 to 4:30, excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Scott M. Martin, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9036. Mr. Martin can also be reached via electronic mail at *martin.scott@epa.gov.*

SUPPLEMENTARY INFORMATION: The use of ''we,'' ''us,'' or ''our'' in this document refers to EPA.

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I. What Action Is EPA Taking?

Today, EPA is proposing four actions and providing status information on a fifth matter. First, EPA is proposing to determine that the Atlanta area has attained the 1-hour ozone standard NAAQS based on air quality monitoring data for the 2003 through 2004 ozone season. Second, EPA is proposing to determine that certain CAA SIP submittal requirements related to attainment demonstrations and reasonable further progress are not applicable to the Atlanta area because the area is attaining the 1-hour ozone standard. If an area has in fact attained

the 1-hour ozone standard, the stated purpose of CAA SIP submissions relating to attainment demonstrations and reasonable further progress (*i.e.* to ensure timely attainment of the 1-hour ozone standard) has already been fulfilled and there is no need for an area to make further submissions containing additional measures to achieve attainment. Third, EPA is proposing to approve a change in the legal designation of the Atlanta area from nonattainment to attainment for the 1-hour ozone NAAQS. The current Atlanta 1-hour ozone nonattainment area consists of the following counties: Cherokee, Clayton, Cobb, Coweta, DeKalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Henry, Paulding and Rockdale (Atlanta area). Fourth, EPA is proposing to approve Georgia's maintenance plan SIP revision for the Atlanta area. The maintenance plan is designed to keep the Atlanta area in attainment for the 1-hour ozone standard for the next 10 years.

Fifth, in support of the transportation conformity process, EPA is providing information on the status of its transportation conformity adequacy determination for new motor vehicle emission budgets (MVEB) for the year 2015 that are contained Georgia's the 10-year 1-hour ozone maintenance plan SIP submittal for the Atlanta area.

II. What Is the Background for This Action?

Under section 107(d)(1)(C) of the CAA, each ozone area designated nonattainment for the 1-hour ozone NAAQS prior to enactment of the 1990 CAA amendments, such as the Atlanta area, was designated nonattainment by operation of law upon enactment of the 1990 amendments. Under section 181(a) of the Act, each ozone area designated nonattainment under section 107(d) was also classified by operation of law as ''marginal,'' ''moderate,'' ''serious,'' ''severe,'' or ''extreme,'' depending on the severity of the area's air quality problem. These nonattainment designations and classifications were codified in 40 CFR Part 81 (see 56 FR 56694, November 6, 1991). The design value for an area, which characterizes the severity of the air quality problem, is represented by the highest design value at any of the individual ozone monitoring sites in the area (*i.e.*, the highest of the fourth highest 1-hour daily maximums in a given three-year period with complete monitoring data). Table 1 in section 181(a) provides the design value ranges for each nonattainment classification. Ozone nonattainment areas with design values between 0.160 parts per million (ppm) and 0.180 ppm for the three year period 1987–1989 were classified as serious. The Atlanta area design value was 0.162 ppm and thus the area was classified as serious.

Under section 182(c) of the CAA, states containing areas that were classified as serious nonattainment were required to submit SIPs to provide for certain controls, to show progress toward attainment, and to provide for attainment of the ozone NAAQS as expeditiously as practicable but no later than November 15, 1999.

Because Atlanta failed to attain the 1-hour ozone NAAQS by November 15, 1999, EPA issued a final rulemaking action in the September 26, 2003, **Federal Register** (68 FR 55469) determining that, by operation of law, the Atlanta area was being reclassified as a severe ozone nonattainment area effective January 1, 2004. In addition to having been required to submit SIP revisions meeting requirements for marginal, moderate, and serious ozone nonattainment areas, Georgia was required to submit plans meeting the additional requirements for areas classified as severe as required in section 182(d) of the Act.

Under EPA regulations at 40 CFR Part 50, the 1-hour ozone standard is attained when the expected number of days per calendar year with maximum hourly average ozone concentrations above 0.12 ppm or higher is equal to or less than 1, as determined in Appendix H of Part 50. Under Appendix H, the basic method is to record the number of exceedances of the standard monitored at each site in an area for each calendar year and then average the past three calendar years to determine if this average is less than or equal to one. In other words, an area has attained the 1-hour ozone NAAQS if there are three or fewer exceedances recorded over a three-year period at each of the monitoring sites within the area. If there are more than three exceedances over a three-year period at any of the monitoring sites, the area has not attained the standard. Based on ambient ozone season air quality data for the years 2002, 2003, and 2004, the Atlanta area has attained 1-hour ozone NAAQS. (See Table 1 below).

III. Why Is EPA Taking This Action and What Are the Criteria for Redesignation?

Section 107(d)(3)(D) of the CAA allows a Governor, or the Governor's designee, to initiate the redesignation process for an area to apply for attainment status. On February 1, 2005, the Georgia Environmental Protection Division (EPD) submitted a final maintenance plan for the Atlanta 1-hour ozone nonattainment area and a request for redesignation to attainment for the 1-hour ozone NAAQS.

Nonattainment areas may be redesignated to attainment status if certain CAA criteria for redesignation are met. The 1990 CAA Amendments revised section 107(d)(3)(E) to provide five specific requirements that an area must meet in order to be redesignated from nonattainment to attainment: (1) The area has attained the applicable NAAQS; (2) the area has a fully approved SIP under section 110(k) of the CAA; (3) the air quality improvement is due to permanent and enforceable reductions in emissions resulting from implementation of the SIP and applicable Federal air pollution control regulations and other permanent and enforceable reductions, (4) the area has a fully approved maintenance plan pursuant to section 175A of the CAA; and (5) the area has met all applicable requirements under section 110 and part D of the CAA. As detailed below, EPA is proposing to determine that the Atlanta area has attained the 1-hour ozone standard and has fully met the requirements for redesignation found at section 107(d)(3)(E) of the CAA for redesignation of an area from nonattainment to attainment. The EPA believes that Georgia has demonstrated that the Atlanta area has attained, and that the criteria for redesignation have been met.

EPA provided guidance on redesignation in the General Preamble for the Implementation of Title I of the CAA Amendments of 1990, on April 16, 1992 (57 FR 13498), and supplemented this guidance on processing redesignation requests in the following documents:

- State Implementation Plans: General Preamble for the Implementation of Title I of the CAA Amendments of 1990 (57 FR 13498), April 16, 1992 (General Preamble);
- ''Maintenance Plans for Redesignation of Ozone and Carbon Monoxide Nonattainment Areas,'' Memorandum from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, April 30, 1992;
- ''Contingency Measures for Ozone and Carbon Monoxide (CO) Redesignations,'' Memorandum from G.T. Helms, Chief, Ozone and Carbon Monoxide Programs Branch, June 1, 1992;
- ''Procedures for Processing Requests to Redesignate Areas to Attainment,'' Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992;

• ''State Implementation Plan (SIP) Actions Submitted in Response to Clean Air Act (ACT) Deadlines,'' Memorandum from John Calcagni, Director, Air Quality Management Division, October 28, 1992;

• ''Technical Support Documents (TSD's) for Redesignation Ozone and Carbon Monoxide (CO) Nonattainment Areas,'' Memorandum from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, August 17, 1993;

• ''State Implementation Plan (SIP) Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) National Ambient Air Quality Standards (NAAQS) On or After November 15, 1992,'' Memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation, September 17, 1993;

• ''Part D New Source Review (part D NSR) Requirements for Areas Requesting Redesignation to Attainment,'' Memorandum from Mary D. Nichols, Assistant Administrator for Air and Radiation, October 14, 1994; and

• ''Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard,'' Memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, May 10, 1995.

IV. What Is EPA's Evaluation of the Redesignation Request?

EPA is proposing to determine that the Atlanta area has attained the 1-hour ozone NAAQS and, because of that determination, that certain attainment demonstration and reasonable further progress requirements along with other related requirements of part D of Title I of the CAA are not applicable to the Atlanta area. EPA is also proposing approval of both the 1-hour ozone redesignation request and the 10-year maintenance plan SIP revision, including the new 2015 MVEBs. EPA's proposed approval of the 1-hour ozone redesignation request is based on its determination that the Atlanta area has met the five criteria for redesignation to attainment specified in the CAA, including a demonstration that the Atlanta area has attained the 1-hour ozone NAAQS. EPA is proposing approval of the 10-year maintenance plan SIP revision, including the new 2015 MVEBs, because EPA has determined that the plan complies with the requirements of Section 175A of the Act. EPA is proposing to redesignate the Atlanta nonattainment area to attainment status for the 1-hour ozone NAAQS because all five redesignation criteria have been met. The basis for EPA's proposed actions is as follows:

(1). *Criteria (1): Atlanta Has Attained the 1-Hour Ozone NAAQS*

EPA is proposing to determine that the Atlanta area has attained the 1-hour ozone NAAQS. For ozone, an area may be considered attaining the 1-hour ozone NAAQS if there are no violations, as determined in accordance with 40 CFR 50.9 and Appendix H, based on three complete, consecutive calendar years of quality-assured air quality monitoring data. A violation of the 1-hour ozone NAAQS occurs when the annual average number of expected daily exceedances is equal to or greater than 1.05 per year at a monitoring site. A daily exceedance occurs when the maximum hourly ozone concentration during a given day is 0.125 parts per million (ppm) or higher. The data must be collected and quality-assured in accordance with 40 CFR part 58, and recorded in Aerometric Information Retrieval System (AIRS). The monitors should have remained at the same location for the duration of the monitoring period required for demonstrating attainment.

The GAEPD submitted ozone monitoring data for the April through October ozone season from 2002 to 2004. This data has been quality assured and is recorded in AIRS. For the 2002 to 2004 time period, the design value is 0.123 ppm. The average annual number of expected exceedances is 1.0, or less, at each monitor for that same time period. The GAEPD's request is based on an analysis of quality-assured ozone air quality data which is relevant to the redesignation request. The request is based on ambient air ozone monitoring data collected for three consecutive ozone monitoring seasons from 2002 through 2004. The exceedances are summarized in the following table:

TABLE 1.—EXPECTED AND ACTUAL NUMBER OF EXCEEDANCES

Site name	Exceedances			Expected number of exceedances			3-year average
	2002	2003	2004	2002	2003	2004	
Confederate Ave	1	1	1	1	1	1	1.00
Conyers	2	0	0	2	0	0	0.67
Douglasville	1	0	0	1	0	0	0.33
Fayetteville	1	0	0	1	0	0	0.33
Gwinnett Tech	0	1	0	0	1	0	0.33
Kennesaw	1	0	0	1	0	0	0.33
McDonough	2	0	0	2	0	0	0.67
Newnan	0	0	0	0	0	0	0.00
South DeKalb	2	0	1	2	0	1	1.00
Tucker	1	1	1	1	1	1	1.00
Yorkville	2	0	0	2	0	0	0.67

In addition, GAEPD has committed to continue monitoring in these areas in accordance with 40 CFR part 58. In summary, EPA agrees that the data submitted by Georgia provides an adequate demonstration that the Atlanta area has attained the 1-hour ozone NAAQS.

(2). *Criteria (2) and (5): The Area Has a Fully Approved SIP Under Section 110(k); and the Area Meets All Applicable Requirements Under Section 110 and Part D of the CAA.*

In order to analyze whether the Atlanta area meets these criteria, it is necessary to discuss what requirements are applicable to the Atlanta area, and for the applicable SIP requirements, the extent to which they are fully approved under section 110(k) of the CAA.

Applicable Requirements

1. General SIP requirements: Section 110(a)(2) of the CAA delineates the general requirements for a SIP, which include enforceable emission

limitations and other control measures, means, or techniques, provisions for the establishment and operation of appropriate devices necessary to collect data on ambient air quality, and programs to enforce the limitations. These requirements are discussed in the following EPA documents: ''Procedures for Processing Requests to Redesignate Areas to Attainment,'' John Calcagni, Director, Air Quality Management Division, September 4, 1992; ''State Implementation Plan (SIP) Actions Submitted in Response to Clean Air Act (CAA) Deadlines,'' John Calcagni, Director, Air Quality Management Division, October 28, 1992; and ''State Implementation Plan (SIP) Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) National Ambient Air Quality Standards (NAAQS) on or after November 15, 1992,'' Michael H. Shapiro, Acting Assistant Administrator, September 17, 1993.

EPA has analyzed the Georgia SIP and determined that it is consistent with the requirements of CAA section 110(a)(2). Title 40 CFR 52.570 subpart L contains the historical record of the Georgia SIP. The SIP contains enforceable emission limitations; requires monitoring, compiling, and analyzing ambient air quality data; requires preconstruction review of new major stationary sources and major modifications to existing ones; provides for adequate funding, staff, and associated resources necessary to implement its requirements; and requires stationary source emissions monitoring and reporting.

2. Part D: General Provisions for Nonattainment Areas:

Before an area may be redesignated to attainment, it must have fulfilled the applicable requirements of part D. Under part D of title I of the CAA, an area's ozone classification determines the requirements to which it is subject. Subpart 1 of part D specifies the basic requirements applicable to all nonattainment areas. Subpart 2 of part D establishes additional requirements for nonattainment areas classified under Table 1 of section 181(a) of the CAA. As described in the General Preamble for Implementation of title I of the CAA, specific requirements of subpart 2 may override or modify subpart 1's general provisions (57 FR 13501, April 16, 1992). Therefore, in order to be redesignated, the State must meet the applicable requirements of subpart 1 of part D—specifically section 172(c), as well as the applicable requirements of subpart 2 of part D (section 182).

Section 172(c). A thorough discussion of the requirements contained in section 172(c) may be found in the General Preamble for Implementation of title I (57 FR 13498, April 16, 1992). Section 172(c) requires Georgia to adopt reasonable further progress plans, emission inventories, and establish a permit program for the construction of new and modified sources. The discussion below regarding section 182(a)(1) and section 182(d)(1)(A) describes how Georgia satisfies the requirements for emission inventories and rate-of-progress plans. In addition, Georgia's permit program was originally approved on August 20, 1976 (41 FR 35184) and was last revised on July 11, 2002, (67 FR 45909). These general requirements for nonattainment plans have been met by Georgia's adoption and implementation, and EPA's approval into the Georgia SIP, of programs and rules needed to attain the 1-hour NAAQS.

Section 182(a)(1)—This provision of the Act provided for the submission of a 1990 Baseline inventory. The EPA approved Georgia's 1990 Baseline Emissions Inventory on April 26, 1999 (64 FR 20186), effective May 26, 1999.

Section 182(a)(2)(A)—This provision of the Act required areas that were designated nonattainment before the Amendments of 1990 to correct any deficiencies in the area's reasonably available control technology (RACT) rules. Modifications to GAEPD's case-by-case volatile organic compound (VOC) and nitrogen oxides (NO_X) rules were adopted by the Georgia Board of Natural Resources on December 7, 2004, and filed with the Georgia Secretary of State on December 10, 2004. The EPA intends to propose approval of these rule revisions in a separate action. Final action on these rule revisions will occur on or before the date of any final action to redesignate the Atlanta area to attainment.

Section 182(a)(2)(B)—This provision of the Act relates to the savings clause for vehicle inspection and maintenance. It requires marginal areas to adopt vehicle inspection and maintenance programs. The discussion below regarding section 182(c)(3) describes how Georgia satisfies this requirement.

Section 182(a)(2)(C)—This provision of the Act required Georgia to adopt a New Source Review (NSR) Permit Program or to correct its existing program to meet EPA guidance requirements issued prior to 1990. Georgia's nonattainment NSR program was submitted November 13, 1992, and approved by EPA March 8, 1995, (60 FR 12688), effective May 8, 1995.

Section 182(a)(3)(A)—This provision of the Act requires a triennial Periodic Emissions Inventory for the nonattainment area. The most recent inventory for the Atlanta area was compiled for 2002 and submitted to EPA in June 2004, as required by the Consolidated Emissions Reporting Rule (CERR) which was promulgated by EPA on June 10, 2002. The CERR consolidates the requirements of this portion of the Act with other general provisions of Section 110 and continues the triennial reporting requirement for 2002 and beyond.

Section 182(a)(3)(B)—This provision of the Act requires sources of VOCs and NO_X in the nonattainment area to submit annual Emissions Statements regarding the quantity of emissions from the previous year. Georgia's Emissions Statements Program was submitted on November 13, 1992. Its approval by EPA was published in the **Federal Register** on February 2, 1996, (61 FR 3819), effective April 2, 1996.

Section 182(b)(2)—This provision of the Act requires RACT for each category of VOC sources covered by a control technique guideline (CTG). Georgia has adopted numerous VOC controls which can be found by referencing 40 CFR 52.570 subpart L.

Section 182(b)(4)—This provision of the Act requires the adoption of motor vehicle inspection and maintenance programs. The discussion below regarding section 182(c)(3)describes how Georgia satisfies this requirement.

Section 182(b)(5)—This provision of the Act requires the adoption of a general offset requirement of at least 1.15 to 1. The discussion below regarding section 182(d)(2) describes how Georgia satisfies this requirement.

Section 182(b)(3)—This provision of the Act requires Stage II refueling vapor recovery in ozone nonattainment areas classified as moderate or worse. Georgia's rule implementing the Stage II program was submitted November 13, 1992, and approved by EPA on February 2, 1996, (61 FR 3819), effective April 2, 1996.

Section 182(c)(1)—This provision of the Act requires enhanced monitoring of ozone and its precursors in ozone nonattainment areas classified as serious or worse. The Code of Federal regulations (40 CFR Part 58) was subsequently revised to require States to establish Photochemical Assessment Monitoring Stations (PAMS) as part of their SIP monitoring networks. Georgia's PAMS network was approved in a November 23, 1993, memorandum from EPA's Office of Air Quality Planning and Standards.

Section 182(c)(3)—This provision of the Act requires enhanced vehicle inspection and maintenance (I/M) in ozone nonattainment areas classified as

serious or worse. Georgia's enhanced I/M rule was submitted to EPA on August 9, 1999, and approved on April 19, 2002 (67 FR 19335), effective June 18, 2002.

Section 182(c)(4)—This provision of the Act requires a clean-fuel vehicle program in ozone nonattainment areas classified as serious or worse. Georgia's clean-fueled fleets rule was submitted to EPA on May 5, 1994, and approved on December 21, 1995, (60 FR 66150), effective May 22, 1994.

Section 182(c)(6)—This provision of the Act requires a serious or worse ozone nonattainment area to submit a *de minimis* rule for its NSR program. Georgia's rule was submitted November 13, 1992, and approved by EPA March 8, 1995, (60 FR 12688), effective May 8, 1995.

Section 182(c)(7)—This provision of the Act requires a special NSR rule for sources that emit less than 100 tons per year. Georgia's rule was submitted November 13, 1992, and approved by EPA March 8, 1995, (60 FR 12688), effective May 8, 1995.

Section 182(c)(8)—This provision of the Act requires a special NSR rule for sources that emit 100 or more tons per year. Georgia's rule was submitted November 13, 1992, and approved by EPA March 8, 1995, (60 FR 12688), effective May 8, 1995.

Section 182(d)—This provision of the Act requires that the major source threshold be defined as 25 tons per year. On March 15, 2005, GAEPD submitted rule revisions addressing this requirement. EPA intends to propose approval for this revision in a separate action. Final action on these revisions will occur on or before the date of any final action to redesignate the Atlanta area to attainment.

Section 182(d)(1)(A)—This provision of the Act requires severe ozone nonattainment areas to offset growth in emissions attributable to growth in vehicle miles traveled (VMT); to select and implement transportation control measures (TCMs) necessary to comply with the periodic emissions reduction requirements of Sections 182(b) and (c); and to consider TCMs specified in Section 108(f), and implement such TCMs as necessary to demonstrate attainment with the ozone standard. The first requirement was addressed in Georgia's Severe Area VMT SIP, submitted June 30, 2004. EPA intends to propose approval for this submittal in a separate action. Final action on these revisions will occur on or before the date of any final action to redesignate the Atlanta area to attainment. The second requirement was addressed in Georgia's 15 percent reasonable further progress (RFP) SIP (the 15 Percent Plan), the last revision to which was submitted on June 17, 1996, and approved by EPA on April 26, 1999 (64 FR 20186), effective May 26, 1999. That approval also included the TCMs in the 15 Percent Plan and therefore satisfies the second requirement. The third requirement, the selection and implementation of TCMs as necessary to demonstrate attainment of the ozone standard, is not applicable because the Atlanta area is attaining the 1-hour ozone NAAQS. A further discussion of non-applicability of requirements because of the attainment of the 1-hour ozone standard is set forth below.

Section 182(d)(2)—This provision of the Act requires a ratio of total emission reductions to total increased emissions of at least 1.3 to 1. Georgia's VOC offset rule, revised to address this severe nonattainment area requirement, was approved by the Georgia Board of Natural Resources on April 28, 2004. EPA intends to propose approval for this submittal in a separate action. Final action on these revisions will occur on or before the date of any final action to redesignate the Atlanta area to attainment.

Section 182(f)—This provision of the Act requires that plan provisions required for major stationary sources of VOCs shall also apply to major stationary sources of NO_X (under title I, part D, and subpart 2) unless the Administrator determines that net air quality benefits are greater in the absence of reductions of NO_X from the sources concerned. The Georgia SIP was amended in 1992 to add the requirements of NO_X offsets for new or modified major stationary sources in the nonattainment area. EPA approved this revision on March 8, 1995, (60 FR 12688), effective May 8, 1995.

Non-Applicable Requirements Due to Attainment of 1-Hour Ozone Standard

EPA interprets the CAA's general nonattainment provisions of subpart 1 of part D of Title I (sections 171 and 172) and the more specific attainment demonstration and related provisions of subpart 2 (section 182), relating to SIP requirements for ozone nonattainment areas to not require the submission of SIP revisions concerning reasonable further progress (RFP), attainment demonstrations, or contingency measures for areas where the monitoring data show that the area is attaining the 1-hour ozone standard. (See *Sierra Club* v. *EPA,* 99 F.3d 1551 (10th Cir. 1996)). This rationale is described in a memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, entitled ''Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard,'' dated May 10, 1995. (See also, the final determination of attainment for St. Louis, 68 FR 25418, May 12, 2003; the proposed determination of attainment for St. Louis, 68 FR 4847, 4848, January 30, 2003; the proposed determination of attainment for Louisville, 66 FR 27483, 27486, May 17, 2001; and the proposed determination of attainment for Pittsburgh-Beaver Valley, 66 FR 1925, January 10, 2001, for more recent applications of this interpretation).

EPA believes it is reasonable to interpret the provisions regarding RFP and attainment demonstrations, along with other certain related provisions, not to require SIP submissions if an ozone nonattainment area subject to those requirements is monitoring attainment of the ozone standard (i.e., attainment of the NAAQS demonstrated with three consecutive years of complete, quality-assured, air quality monitoring data). EPA believes this interpretation is reasonable because the stated purpose of CAA provisions addressing or relating to RFP and attainment demonstrations is to ensure attainment of the standard by the applicable attainment date. If an area has in fact attained the standard, the stated purpose of the requirement will have been fulfilled and there will be no need for an area to make a further submission containing additional measures to achieve attainment. EPA has explained at length in other actions its rationale for the reasonableness of this interpretation of the CAA and incorporates those explanations by reference. See (67 FR 49600) (Cincinnati-Hamilton, Kentucky, July 31, 2002); (66 FR 53095) (Pittsburgh-Beaver Valley, Pennsylvania, October 19, 2001); (65 FR 37879) (Cincinnati-Hamilton, Ohio and Kentucky, June 19, 2000); (61 FR 20458) (Cleveland-Akron-Lorain, Ohio, May 7, 1996); (60 FR 36723) (Salt Lake and Davis Counties, Utah, July 18, 1995); (60 FR 37366 (July 20, 1995); (61 FR 31832–31833) (June 21, 1996) (Grand Rapids, MI). The United States Court of Appeals for the Tenth Circuit has upheld EPA's interpretation. *Sierra Club* v. *EPA,* 99 F.3d 1551 (10th Cir. 1996).

Pursuant to this interpretation, EPA's is proposing to determine that the following CAA provisions are not applicable requirements for purposes of this redesignation request because EPA believes the Atlanta area is currently attaining the 1-hour ozone standard:

Section 172(c)(2): Reasonable further progress (all nonattainment areas). As EPA stated in the General Preamble, no other measures to provide for attainment would be needed by areas seeking redesignation to attainment since ''attainment will have been reached.'' (57 FR 13564).

Section 172(c)(9): Contingency Measures. EPA has previously interpreted the contingency measure requirements of this section as no longer being applicable once an area has attained the standard since those ''contingency measures are directed at ensuring RFP and attainment by the applicable date.'' (57 FR 13564).

Section 182(b)(1)(A): Reasonable further progress (the 15 Percent Plan -VOC reductions for moderate and above nonattainment areas). Similar reasoning applies to this section. Although not an applicable requirement, Georgia's last revision was submitted June 17, 1996, approved April 26, 1999 (64 FR 20186), with an effective date of May 26, 1999.

Section 182(c)(2)(A): Attainment Demonstration (for serious and above nonattainment areas). As noted above, if an area has, in fact, monitored attainment of the relevant NAAQS, EPA believes there is no need for an area to make a further submission containing additional measures to achieve attainment. Upon attainment, the focus of state planning efforts shifts to the maintenance of the NAAQS and the development of a maintenance plan under section 175A.

Section 182(c)(2)(B): Reasonable further progress (for serious and above nonattainment areas). Similar reasoning applies to this section. Although not applicable requirements, the 9 Percent Plan (NO_X reductions), required by Section 182(c)(2)(B), were submitted by Georgia on June 17, 1996, approved March 18, 1999 (64 FR 13348), effective April 19, 1999. In addition, the Post-1999 Rate-of-Progress (ROP) Plan (NO_X reductions), required by Section 182(c)(2)(B), was submitted by Georgia on December 24, 2003, approved July 19, 2004 (69 FR 42880), effective August 18, 2004.

Section 182(c)(5): Triennial Demonstrations (for serious and above nonattainment areas). Similar reasoning applies to this section.

Section 182(c)(9): Contingency Provisions (for serious and above nonattainment areas). Similar reasoning applies to this section.

Section 182(g): Milestones. Similar reasoning applies to this section.

Other Non-Applicable Requirements

Section 176(c): Section 176(c) of the CAA requires states to establish criteria and procedures to ensure that federally supported or funded projects, before they are undertaken, conform to the air quality planning goals in the SIP. The requirement to determine conformity applies to transportation plans, programs and projects developed, funded or approved under Title 23 U.S.C. of the Federal Transit Act (''transportation conformity''), as well as to all other Federally supported or funded projects (''general conformity''). Section 176 further provides that state conformity revisions must be consistent with Federal conformity regulations that the CAA required the EPA to promulgate.

Since 1995, EPA has consistently interpreted the conformity requirements as not applying to the evaluation of redesignation requests under section 107(d) by the Agency. The rationale for this is based on a combination of two factors. First, the requirement to submit SIP revisions to comply with the conformity provisions of the CAA continues to apply to areas after redesignation to attainment, since such areas would be subject to a section 175A maintenance plan. Second, EPA's Federal conformity rules require the performance of conformity analyses in the absence of Federally approved state rules. Therefore, because areas are subject to the conformity requirements regardless of whether they are redesignated to attainment and must implement conformity under Federal rules if states rules are not yet approved, EPA believes it is reasonable to view these requirements as not applying-to evaluations of redesignation requests by the Agency. See, *Wall* v. *EPA*, 265 F.3d 426, 439 (6th Cir. 2001) upholding this interpretation.

(3). *Criteria (3): The Air Quality Improvement in the Atlanta Area Is Due to Permanent and Enforceable Reductions in Emissions Resulting From Implementation of the SIP and Applicable Federal Air Pollution Control Regulations and Other Permanent and Enforceable Reductions.*

For the following reasons, EPA has determined that this Criteria has been met. First, EPA approved Georgia's SIP control strategy for the Atlanta area, including rules and the emission reductions achieved as a result of those rules that are enforceable. Second, a number of Federal and Statewide rules are in place which have significantly improved the ambient air quality in these areas. The following table is a partial list of rules which have been adopted, are permanent, enforceable, and demonstrate that the improvements in air quality in Atlanta are a result of control measures.

TABLE 2.—STATE CONTROL STRATEGY

State control strategy	Compliance date	Implemented
Requiring Stage I Vapor Recovery at Gasoline Dispensing Facilities in 13 counties (391–3–1–.02(2)(rr)).	Prior to November 15, 1994	Yes.
Expanding VOC and NO_X RACT requirements to 6 additional counties (391–3–1–.02(2)(tt) and (yy)).	Prior to May 1, 2003	Yes.
Requiring Stage II Vapor Recovery at Gasoline Dispensing Facilities in 13 counties (391–3–1–.02(2)(zz)).	Prior to November 15, 1995	Yes.
Lowering Automobile Windshield Washer Fluid VOC Content in 13 counties (391–3–1–.02(2)(aaa)).	Prior to January 1, 1996	Yes.
Lowering Reid Vapor Pressure (RVP) of gasoline sold in 45 counties (391–3–1–.02(2)(bbb)).	Prior to June 1, 1999	Yes.
Lowering Sulfur Content of gasoline sold in 45 counties (391–3–1–.02(2)(bbb))	Prior to September 16, 2003	Yes.
Limiting NO_X Emissions from 5 Georgia Power Plants (Bowen, Hammond, McDonough, Wansley, and Yates) to 0.13 lb/MMBtu (391–3–1–.02(2)(jjj)).	Prior to May 1, 2003	Yes.
Limiting NO_X Emissions from 7 Georgia Power Plants (Bowen, Hammond, McDonough, Wansley, Yates, Branch and Scherer) to 0.20 lb/MMBtu (391–3–1–.02(2)(jjj)).	Prior to May 1, 2003	Yes.
Regulating NO_X Emissions from Fuel-Burning Equipment in 45 counties (391–3–1–.02(2)(lll)).	Prior to May 1, 2000	Yes.

TABLE 2.—STATE CONTROL STRATEGY—Continued

State control strategy	Compliance date	Implemented
Regulating NO_X Emissions from Stationary Gas Turbines and Stationary Engines used to Generate Electricity in 45 counties (391–3–1–.02(2)(mmm)).	Prior to May 1, 2003	Yes.
Regulating NO_X Emissions from Large Stationary Gas Turbines in 45 counties (391–3–1–.02(2)(nnn)).	Prior to May 1, 2003	Yes.
Implementing a ban on Open Burning activities during the ozone season in 45 counties (391–3–1–.02(5)).	Prior to May 1, 2001	Yes.
Implementation of stricter PSD permitting requirements including lower applicability thresholds and emission offset requirements in 6 additional counties (391–3–1–.03(8)).	June 6, 1999	Yes.
Improving rule effectiveness for various rules (e.g., Graphic Arts Rule (391–3–1–.02(2)(mm)) and Coil Coating Rule (391–3–1–.02(2)(v))).	June 1996	Yes.
Implementing an enhanced inspection and maintenance program for vehicles in 13 counties (391–3–1–20).	October 1, 1996	Yes.
Limiting emissions from specific industrial sources through air quality permits (e.g., Blue Circle Cement (Lafarge), Transcontinental Gas Pipeline, Austell Box Board).	May 1, 2003	Yes.

In addition to the State adopted rules the following Federal control measures are also implemented in the Atlanta area:

TABLE 3.—FEDERAL CONTROL STRATEGY

Federal control measures	Compliance date	Implemented
National Architectural Coatings Rule	August 14, 1998	Yes.
National Autobody Refinishing Rule	August 14, 1998	Yes.
National Consumer Products Rule	September 11, 1998	Yes.
Federal Motor Vehicle Control Program, including National Tier 0, 1, and 2 Tailpipe Standards.	February 10, 2000	Yes.
Federal Heavy-Duty Highway Engine Standards (both sets: 2004-and-later, 2007-and-later).	October 6, 2000	Yes.
National Standards for New Nonroad Spark-Ignition Engines At or Below 19 kW	April 25, 2000	Yes.
Small Non-Road Gasoline Engines	April 25, 2000	Yes.
Large Non-Road Gasoline Engines	November 8, 2002	Yes.
Federal Consumer and Commercial Products Requirements	August 14, 1998	Yes.
Federal Non-Road Diesel Engine Phases 2 and 3 Requirements	May 11, 2004	Yes.
Federal Marine Engine Requirements	October 4, 1996; November 8, 2002; February 28, 2003.	Yes.
Federal Locomotive Requirements	December 17, 1997	Yes.

Third, the ambient ozone monitoring data in Table 1 demonstrates that the Atlanta area has attained the 1-hour ozone NAAQS during the time period of 2002–2004. Tables 2 and 3 list many, but not all, of the control measures which have been implemented in the Atlanta area to ensure that the reductions in ozone are permanent and enforceable. Fourth, based upon data previously supplied by the State of Georgia these control measures have resulted in more than 430 tpd in NO_X emissions reductions, and 80 tpd VOC emissions reductions from the 1990 baseline inventory.

Fifth, EPA believes that the improvement in air quality is attributable to reductions in emissions rather than solely from favorable meteorology. The GA EPD conducted an analysis of both the meteorological conditions and concentrations of ozone and its precursor gases during the 1999–2004 period. This analysis examined the variability in temperature, wind speed, and cloud cover which all play a role in producing conditions conducive to ozone formation. While, on average, meteorological conditions in 2002–2004 were less conducive to ozone formation than those conditions during 1999–2001, all factors that are generally agreed to contribute to high ozone concentrations were present. When high ozone days from the 1999–2001 period are compared with high ozone days during the 2002–2004 period it can be seen that the meteorological conditions were very similar. In addition, based on data noted above there is also a downward trend in NO_2 and NO_X concentrations during the same years. The downward trend in ambient ozone concentrations coincides with the implementation of NO_X control measures by the State of Georgia. In 1999, the Atlanta nonattainment area's ozone design value was 0.156 ppm, and in 2004, the design value decreased to 0.123 ppm. This is significant since scientific studies have generally shown ozone in the Atlanta region to be limited primarily by NO_X. Therefore, while meteorological variability may have contributed to the downward trend in ozone, substantial NO_X emission reductions have occurred (data referenced above) concurrently strongly suggesting that the reductions in NO_X emissions contributed substantially to reductions in ozone concentrations during the 2002–2004 time period. Thus, EPA agrees with the State's analysis that decreases in ozone concentrations in the Atlanta area have coincided with and are attributable to the implementation of emission control measures rather than favorable meteorology.

(4). *Criteria (4): The Area Has a Fully Approved Maintenance Plan Pursuant to Section 175A of the CAA.* EPA is proposing to approve Georgia's 10-year 1-hour ozone maintenance plan SIP submittal for the Atlanta area, including the newly established motor vehicle emission budgets for the year 2015. EPA

approval of the maintenance plan would satisfy the final criteria for redesignation of the Atlanta area to attainment status for the 1-hour ozone standard.

Section 175A of the CAA sets forth the elements of maintenance plan for areas seeking redesignation from nonattainment to attainment. Under section 175A, the plan must demonstrate continued attainment of the applicable NAAQS for at least ten years after the Administrator approves a redesignation to attainment. Eight years after the redesignation, the State must submit a revised maintenance plan which demonstrates that attainment will continue to be maintained for the ten years following the initial ten-year period. To provide for the possibility of future NAAQS violations, the maintenance plan contains contingency measures, with a schedule for implementation, adequate to assure prompt correction of any future 1-hour ozone violations.

On February 1, 2005, GAEPD submitted its revision to the Georgia SIP to include a 10-year maintenance plan as required by section 175A of the CAA. The maintenance plan shows compliance and maintenance of the 1-hour ozone standard by assuring that current and future emissions of VOC and NO_X remain at or below attainment year emission levels.

Monitored attainment of the 1-hour standard was achieved for the 2002–2004 three-year period. The most recent comprehensive periodic (triennial) emissions inventory for the Atlanta area was compiled for 2002 pursuant to section 182(a)(3)(A). In accordance with federal requirements, the triennial inventory for 2002 was submitted to EPA by June 1, 2004.

According to the September 4, 1992, EPA guidance document entitled, ''Procedures for Processing Requests to Redesignate Areas to Attainment,'' the base attainment inventory should be consistent with EPA's most recent guidance on emission inventories and should represent the emissions during the time period associated with the monitoring data showing attainment. For purposes of demonstrating maintenance of the standard, 2002 was chosen as the base year representing the monitoring period of 2002–2004. The attainment year is 2004.

Attainment Inventory

Georgia's complete 2002 Periodic Emissions Inventory (PEI), submitted to EPA in June 2004, was the basis for point and area source emissions projections. The point source emissions for calendar year 2002 included in the 2002 PEI were taken from the data obtained from these regulated facilities. The 2002 point and area source inventories were grown to later years using projection factors from EPA's Economic Growth Analysis System (EGAS) 4.0. The resulting point and area inventories are conservatively high because no control factors were applied to the projected emissions. Updated nonroad and on-road mobile emissions for 2002 were calculated based on EPA-approved models (NONROAD and MOBILE6.2.03, respectively).

With the exception of mobile sources and nonroad sources, which were explicitly modeled for each year, emissions were in general, projected by applying projection factors to 2002 emissions inventories. The projection factors were produced using EPA's Economic Growth Analysis System (EGAS) software, Version 4.0.

Maintenance Demonstration

The required maintenance plan must become a part of the SIP and provide for maintenance of the air quality in the affected area for at least 10 years after designation. Georgia has chosen 2015 as the end year of the maintenance plan for the Atlanta area.

The approach used for the maintenance plan to demonstrate that attainment of the 1-hour ozone standard will continue to be maintained is based upon restricting future anthropogenic emissions to a level that is representative of attainment of the standard. If these future emissions are no greater than the actual emissions during a year in the three year period for which attainment of the standard was monitored, then it can be assumed that attainment of the standard will also be achieved in future years.

It can be seen from Table 3 and Table 4 that there is a calculated safety margin for both VOC and NO_X for each year for which projections were made in the maintenance plan. Note that the mobile source emissions for 2005, 2010, and 2015 include the small emissions increases (0.09 NO_X tons per day, 0.24 VOC tons per day) resulting from the senior citizen vehicle inspection exemption in 2004.

TABLE 4.—ATLANTA 1-HOUR OZONE ATTAINMENT AREA MAINTENANCE PLAN NO_X EMISSIONS

[Tons per summer day]

Source category	2002	2005	2010	2015
Total for the Atlanta area:				
Point	55.58	54.99	58.43	63.79
Area	28.57	29.52	31.75	33.81
Mobile	365.55	284.72	191.65	110.80
Nonroad	114.35	116.24	107.72	98.15
Total	564.05	485.48	389.55	306.55
Maintenance Plan Decrease from 2002, (NO_X Safety Margin*)		78.57	174.50	257.50

*After assigning 11.08 TPD of the 2015 NO_X safety margin to the Motor Vehicle Emissions Budget, the revised 2015 NO_X safety margin will be 246.42 TPD.

TABLE 5.—ATLANTA 1-HOUR OZONE ATTAINMENT AREA MAINTENANCE PLAN VOC EMISSIONS

[Tons per summer day]

Source category	2002	2005	2010	2015
Total for the Atlanta area:				
Point	15.71	17.11	19.69	22.12
Area	294.20	314.68	357.11	398.41
Mobile	184.84	141.91	112.34	75.84

TABLE 5.—ATLANTA 1-HOUR OZONE ATTAINMENT AREA MAINTENANCE PLAN VOC EMISSIONS—Continued

[Tons per summer day]

Source category	2002	2005	2010	2015
Nonroad	83.44	64.28	48.96	47.02
Total	578.19	537.98	538.10	543.40
Maintenance Plan Decrease from 2002 (VOC Safety Margin*)		40.21	40.09	34.79

*After assigning 7.58 TPD of the 2015 VOC safety margin to the Motor Vehicle Emissions Budget, the revised 2015 VOC safety margin will be 27.21 TPD.

A ''safety margin'' is the difference between the attainment level of emissions (from all sources) and the projected level of emissions (from all sources) in the maintenance plan. The attainment level of emissions is the level of emissions during one of the years in the three year period for which the area met the NAAQS. For example, the Atlanta area attained the 1-hour ozone NAAQS during the 2002–2004 time period. Georgia uses 2002 as the attainment level of emissions for the area. The emissions from point, area, nonroad, and mobile sources in 2002 equaled 578.19 tpd of VOC for the Atlanta area. Projected VOC emissions out to the year 2015 equaled 543.40 tpd of VOC. The safety margin for VOCs is calculated to be the difference between these amounts or, in this case, 34.79 tpd of VOC for 2015. By this same method, 257.50 tpd (*i.e.*, 564.05 in 2002 minus 306.55 in 2015) is the safety margin for NO_X for 2015. The emissions are projected to maintain the area's air quality consistent with the NAAQS. The safety margin is the extra emissions that can be allocated as long as the total attainment level of emissions is maintained. The credit, or a portion thereof, can be allocated to any of the source categories. The State of Georgia has also committed in the maintenance plan to the necessary continued operation of the ozone monitoring network in compliance with 40 CFR part 58.

Under section 211 of the Act, the requirement to use reformulated gasoline (RFG) became effective for the Atlanta severe nonattainment area on January 1, 2005. Georgia petitioned EPA to waive the RFG requirement for Atlanta. EPA found that it lacked the authority to grant the waiver request and denied the petition. Georgia filed a lawsuit to stop the implementation of RFG in Atlanta. The State's request for a preliminary injunction was denied and Georgia appealed that decision. Nevertheless, the RFG requirement was stayed pending appeal by order of the Federal District Court for the Northern District of Georgia in the case of *State of Georgia* v. *Michael Leavitt*, Docket # 1:04–CV–2778–CC. That case is now pending before the 11th Circuit Court of Appeals in Atlanta. In its 1-hour maintenance demonstration, GAEPD's mobile source modeling of the 1-hour ozone standard through the year 2015 was broken down as follows: Emissions for 2005–2015 were modeled assuming RFG with a 10 percent (by volume) ethanol oxygenate and 7.3 psi Reid Vapor Pressure (RVP); emissions for 2004 and earlier were modeled using the low sulfur (30 ppm)/low RVP (7.0 psi) Georgia gasoline in place under the SIP before the mandated RFG implementation date. EPA's independent analysis of the impacts of RFG for air quality in the 13-county Atlanta nonattainment area during our review of the Georgia petition to waive the RFG requirement, indicated that RFG would likely lead to a slight increase in NO_X emissions and would be relatively equivalent in emission benefit for VOC. This analysis indicates that a mobile run using only Georgia gasoline would likely produce at least equivalent NO_X and VOC levels. In any event, any increases would be well within the safety margin discussed above. Therefore, maintenance is indicated under either future fuel scenario (*i.e.*, using RFG or Georgia gasoline currently in place). EPA intends to confirm this conclusion prior to final action on this proposed redesignation. Thus, EPA believes that GAEPD's mobile source emissions modeling supports maintenance of the 1-hour ozone standard through the year 2015. EPA will address the applicability of RFG to severe areas like Atlanta after redesignation to maintenance and after the revocation of the one-hour standard in a separate action.

Plan To Maintain Air Quality

The GAEPD has implemented programs that will remain enforceable to ensure that maintenance of the 1-hour standard will continue. Regulations are prohibited from being removed from the SIP (''anti-backsliding'') following the redesignation of the area unless such a change is first approved by the EPA as a revision to the Georgia SIP, as provided by section 110(l) of the Act.

Control measures have been implemented on point, area, mobile, and nonroad sources to reduce emissions of oxides of NO_X and VOCs, both in the 13-county Atlanta nonattainment area and in surrounding counties. Control measures have been developed at both the state and federal level. Table 1 and Table 2 are lists of state and federal controls, respectively. These tables show the control measures relied upon to attain and maintain the 1-hour NAAQS.

All controls relied upon to attain the 1-hour NAAQS were implemented no later than May 1, 2003, except for the regional NO_X SIP Call and a portion of the Georgia gasoline marketing rule. The gasoline marketing rule requiring 30 ppm average sulfur year-round was implemented on September 16, 2003. The air quality impact of the new gasoline marketing sulfur content rule was realized in the 2004 ozone season with additional reductions of NO_X and VOCs. The NO_X SIP Call was implemented in neighboring States (AL, KY, TN, SC, and NC) on May 31, 2004. This resulted in the reduction of regional transport of ozone and its precursors.

Verification of Continued Attainment

Verification of continued attainment is accomplished through operation of the ambient ozone monitoring network and the periodic updates of the area's emissions inventory.

The 11 ambient ozone monitors currently operating in the Atlanta area will continue to operate unless a change is approved by EPA consistent with 40 CFR part 58. No plans are underway to discontinue operation, relocate, or otherwise affect the ambient monitoring network in place.

As noted above, the 1990 Amendments required a triennial Periodic Emissions Inventory for the

nonattainment area. The most recent inventory for the Atlanta area was compiled for 2002. The Consolidated Emissions Reporting Rule (CERR) was promulgated by EPA on June 10, 2002. For the purposes of verifying continued attainment based upon the emissions inventory, the three main components of the inventory will be updated on different schedules. The major point sources of air pollution will continue to submit data on their emissions on an annual basis. This has been required under 40 CFR 51, subpart Q for many years. For the area source and mobile source portions of the inventory, these emissions will continue to be quantified on a three-year cycle. The inventory will be updated and maintained on a three-year cycle. As required by the CERR, the next overall emissions inventory will be compiled for 2005.

Contingency Plan

Section 175A(d) of the Act requires that the maintenance plan include provisions for contingency measures that would assure that the State will promptly correct any violation of the one-hour ozone NAAQS after redesignation of an area as an attainment area. A list of potential contingency measures that could be considered for future implementation in such an event should also be included in the maintenance plan.

The GAEPD has developed a contingency plan for the Atlanta 1-hour ozone nonattainment area. Contingency measures are intended to provide further emission reductions in the event that violations of the one-hour ozone NAAQS occur after redesignation to attainment. Consistent with this plan, GAEPD agrees to adopt and implement, as expeditiously as practicable, the necessary corrective actions in the event that violations of the 1-hour ozone NAAQS occur anywhere within the Atlanta maintenance area after redesignation to attainment. Contingency measures under Tier I or Tier II triggers would be implemented within 18 months unless GAEPD demonstrated to EPA that technical or economic feasibility warranted an implementation period longer than 18 months. Tier I and Tier II triggers are discussed below.

Under Section 175A(d), the minimum requirement for contingency measures is the implementation of all measures that were contained in the SIP before the redesignation. This is met due to the designation of the Atlanta area as nonattainment for the 8-hour ozone standard. The existing measures are expected to remain in place under the active portion of the SIP.

The State of Georgia will use actual ambient monitoring data as the indicator or trigger to determine whether additional contingency measures would be implemented. In accordance with 40 CFR Part 58, ambient ozone monitoring data that indicates a future violation of the 1-hour ozone NAAQS will begin the process to implement these contingency measures according to the protocols identified below. The contingency plan provides for different levels of corrective responses should the 1-hour ozone NAAQS be exceeded or violated, or if emissions in the region increase significantly above current levels.

Contingency Measure Triggers

Tier I: Any monitored ambient concentration of ozone at any ambient monitoring station in the Atlanta maintenance area above 0.124 ppm that occurs more than once per year, or, if the periodic emission inventory updates reveal excessive or unanticipated growth greater than 10 percent in emissions of either ozone precursor over the baseline or intermediate emissions inventories. The GAEPD will evaluate the exceedances to determine if the trend is likely to continue. If it is determined that additional emission reductions are necessary, GAEPD will implement the schedule below to implement any required measures as expeditiously as practicable, taking into consideration the ease of implementation and the technical and economic feasibility of selected measures.

Tier II: Any recorded violation of the 1-hour ozone NAAQS at any ambient monitoring station in the Atlanta maintenance area. The GAEPD will work to conduct a comprehensive study to determine the causes of the violation, and the control measures necessary to mitigate the problem. The comprehensive analysis will examine:

- The number, location, and severity of the ambient ozone concentrations above the standard;
- The weather patterns contributing to ozone levels;
- Potential, contributing emission sources;
- The geographic applicability of possible contingency measures;
- Emission trends, including implementation timelines of scheduled control measures;
- Current and recently identified control technologies; and
- Air quality contributions from outside the maintenance area.

Implementation will be conducted as expeditiously as practicable, taking into consideration the ease of implementation and the technical and economic feasibility of selected measures.

TABLE 6.—TIMELINE FOR THE DEVELOPMENT OF CONTINGENCY REQUIRED REGULATIONS

	Months
Identify potential sources for reductions	3
Identify applicable control measures	3
Initiate a stakeholder process	3
Draft SIP regulations	3
Initiate rulemaking process (including public comment period, hearing, Board adoption and final submission to EPA). This process may be initiated simultaneous with drafting of regulations	6
Completion no later than	18

TABLE 7.—LIST OF POTENTIAL CONTINGENCY MEASURES

Point Source Measures	Expanded geographic coverage of current point source measures. Apply RACT to smaller sources. MACT controls for industrial sources. LAER and offsets. Evaluate sources for additional control. Other measures to be identified.
Mobile Source Measures	California Engine Standards.

TABLE 7.—LIST OF POTENTIAL CONTINGENCY MEASURES—Continued

Area Source Measures	Diesel retrofits. Diesel I/M. Truck idling reductions. Incentives for vehicle retrofits. Other measures to be identified. California Architectural/Industrial Maintenance (AIM). Expanded geographic coverage of current area source measures for NO_X. Low-sulfur off-road fuel standards. California Off-Road Engine Standards. Locomotive emission reduction measures. Other measures to be identified.

Contingency measures will be selected from those listed in the above table or from any other measure deemed appropriate and effective at the time the selection is made. Which measure will be implemented will be determined based upon cost effectiveness, emission reduction potential, economic and social considerations, ease and timing of implementation, and other appropriate factors. Implementation of necessary controls in response to a Tier II trigger will take place as expeditiously as possible, but in no event later than 18 months after Georgia makes a determination, based on quality-assured ambient data, that a violation of the 1-hour ozone NAAQS has occurred.

V. Motor Vehicle Emissions Budgets

Under the CAA, states are required to submit, at various times, control strategy SIPs and maintenance plans in ozone areas. These control strategy SIPs and maintenance plans create motor vehicle emissions budgets (MVEBs) for criteria pollutants and/or their precursors to address pollution from cars and trucks. The MVEB is the portion of the total allowable emissions that is allocated to highway and transit vehicle use and emissions. The MVEBs serve as a ceiling on emissions from an area's planned transportation system.

Motor vehicle emissions budgets for 2004 were established in the Atlanta Post-1999 ROP plan for ozone. The emissions budgets established limits at 160.80 tons/day of VOC and 318.24 tons/day of NO_X. The Atlanta Post-1999 ROP plan, including the motor vehicle emissions budgets, was approved by EPA on July 19, 2004 (69 FR 42880), effective August 18, 2004. A correction to the VOC budget was published August 9, 2004 (69 FR 48150), also effective August 18, 2004.

Georgia's 1-hour ozone redesignation request for the Atlanta area does not alter, by increasing or decreasing, the current 2004 mobile vehicle emissions budgets. The MVEB established in the Post-1999 ROP plan will be used for regional emissions analyses through the year 2014. However, Georgia's 10-year maintenance plan SIP submittal establishes new MVEBs for the year 2015. Both the 2004 MVEBs and the new 2015 MVEBs are set out in Table 8 below. These 2015 MVEB will be used for regional emissions analysis for 2015 and any required analysis year beyond 2015.

Mobile Source Maintenance Budget

The Atlanta area 1-hour ozone maintenance plan establishes an attainment inventory for the year 2002, the first year of the three-year period with monitoring data showing attainment. This attainment inventory identifies the base level of emissions in the area which is sufficient to maintain the 1-hour ozone NAAQS. Maintenance of the 1-hour ozone NAAQS is demonstrated by showing that future emissions of NO_X and VOC will not exceed the level of the attainment inventory. NO_X and VOC emissions from on-road mobile sources were projected for the year 2015. NO_X and VOC emissions were also projected for the year 2015 for point, area and nonroad mobile sources. These projections are shown in Table 4 for NO_X and Table 5 for VOC. As can be seen in Tables 4 and 5, total emissions of NO_X and VOC are projected to decrease from the 2002 base year through the year 2015. Specifically, NO_X emissions are projected to decrease by 257.50 tons per day and VOC emissions are projected to decrease by 34.79 tons per day. These projected decreases in emissions from the base year through 2015 are termed the ''safety margins.'' In establishing motor vehicle emissions budgets for the last year of the maintenance plan (2015 in this case), all or a portion of the safety margins may be allocated to the MVEB.

Under the maintenance plan, 10 percent of the projected 2015 mobile source NO_X and VOC emissions are being allocated to the MVEB to allow for likely changes in mobile source modeling assumptions. The maintenance plan establishes the 2015 MVEB at 121.88 tons per day for NO_X ($110.80 \times 1.1 = 121.88$) and 83.43 tons per day for VOC ($75.84 \times 1.1 = 83.42$). The Atlanta area emissions and safety margins are listed in Table 4 and Table 5.

TABLE 8.—13-COUNTY ATLANTA AREA MVEB

Year for which MVEB established	Where established	NO_X TPD	VOC TPD
2004	Post-1999 ROP Plan	318.24	160.80
2015	Atlanta One-Hour Maintenance Plan	121.88	83.42

VI. What Is EPA's Proposed Action on the Redesignation Request and Maintenance Plan for the Atlanta 1-Hour Ozone Nonattainment Area?

Today, EPA is proposing to approve the redesignation of the Atlanta 1-hour ozone nonattainment area to attainment. EPA has evaluated the State of Georgia's redesignation request and determined that it meets the five redesignation criteria set in section 107(d) of the Act. EPA believes that the redesignation request and monitoring data demonstrate that this area has attained the 1-hour ozone standard. In this redesignation request, EPA's is also proposing to determine that certain CAA provisions are not applicable requirements because the Atlanta area is currently attaining the 1-hour ozone standard. The final approval of this

redesignation request will change the official designation for the Atlanta area from severe nonattainment to attainment for the 1-hour ozone standard.

EPA is also proposing to approve the maintenance plan, and associated 2015 MVEB, SIP revision submitted by Georgia for the Atlanta area in conjunction with its redesignation request. EPA is proposing to approve the maintenance plan for Atlanta because it meets the requirements of section 175A as described more fully above. The new 2015 MVEBs will be effective on the date of publication (in the **Federal Register**) of EPA's final rulemaking on this action.

VII. What Is an Adequacy Determination and What Is the Status of EPA's Adequacy Determination for the Atlanta Maintenance Area's New MVEB for the Year 2015?

Under Section 176(c) of the CAA, new transportation projects, such as the construction of new highways, must ''conform'' to (*e.g.*, be consistent with) the part of the State's air quality plan that addresses pollution from cars and trucks. ''Conformity'' to the SIP means that transportation activities will not cause new air quality violations, worsen existing violations, or delay timely attainment of the NAAQS. Under the transportation conformity rule, at 40 CFR part 93, projected emissions from transportation plans and programs must be equal to or less than the MVEB for the area. If a transportation plan does not ''conform,'' most projects that would expand the capacity of roadways cannot go forward. Regulations at 40 CFR part 93 set forth EPA policy, criteria, and procedures for demonstrating and assuring conformity of such transportation activities to a SIP.

Until a MVEB in a SIP submittal is approved by EPA, it cannot be used for transportation conformity purposes unless EPA makes an affirmative finding that the MVEB contained therein are ''adequate.'' Once EPA affirmatively finds the submitted MVEB adequate for transportation conformity purposes, those MVEB can be used by the State and Federal agencies in determining whether proposed transportation projects ''conform'' to the SIP even though EPA approval of the SIP revision containing those MVEB has not yet been finalized. EPA's substantive criteria for determining ''adequacy'' of MVEB in submitted SIPs are set out in 40 CFR 93.118(e)(4).

EPA's process for determining ''adequacy'' of MVEB in submitted SIPs consists of three basic steps: public notification of a SIP submission, a public comment period, and EPA's adequacy finding. This process for determining the adequacy of submitted SIP MVEB is set out in EPA's May 1999 guidance, ''Conformity Guidance on Implementation of March 2, 1999, Conformity Court Decision.'' This guidance is formalized in EPA's July 1, 2004, final rulemaking entitled ''Transportation Conformity Rule Amendments for the New 8-hour Ozone and PM2.5 National Ambient Air Quality Standards and Miscellaneous Revisions for Existing areas; Transportation Conformity Rule Amendments: Response to Court Decision and Additional Rule Changes (68 FR 38974). EPA follows this process in making its adequacy determinations.

The Atlanta area maintenance plan submission contains new proposed VOC and NO_X MVEB for the year 2015. The availability of the SIP submission with these 2015 MVEB was announced for public comment on EPA's adequacy Web page on January 24, 2005, at: *http://www.epa.gov/otaq/transp/conform/currsips.htm*. The EPA public comment period on adequacy of the 2015 MVEB for the Atlanta Area closed on February 24, 2005, and no adverse comments were received. Following an evaluation of whether the adequacy criteria have been met, EPA will make its adequacy determination. EPA intends to make its determination of the adequacy of the 2015 MVEB for the Atlanta Area for transportation conformity purposes in the final rulemaking on the Atlanta area's 10-year 1-hour ozone maintenance plan submittal (the subject of this proposed rulemaking).

If EPA announces its adequacy finding for the 2015 MVEB, the 2015 MVEB would be effective on the date of publication of EPA's final rulemaking in the **Federal Register**. If EPA announces its adequacy determination for the 2015 MVEB before final action on this rulemaking, the adequate 2015 MVEB will be available for use for transportation conformity purposes on the effective date of the **Federal Register** notice which makes such an adequacy determination. For transportation plan analysis years that involve the year 2014 or before, the applicable budget for the purposes of conducting transportation conformity analyses will be the 2004 VOC (160.80 tpd) and NO_X (318.24 tpd) MVEB for this maintenance area. For transportation plan analysis years that involve the year 2015 or beyond, the applicable budget for the purposes of conducting transportation conformity analyses will be the 2015 VOC (83.42 tpd) and NO_X (121.88 tpd) MVEB for this maintenance area.

VIII. Statutory and Executive Order Reviews

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

This proposed rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). 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 proposes to approve 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 proposed rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

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

Dated: April 12, 2005.

J.I. Palmer Jr.,

Regional Administrator, Region 4.

[FR Doc. 05–7936 Filed 4–19–05; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 25

[IB Docket No. 05–02; FCC 05–14]

Service Rules and Procedures To Govern the Use of Aeronautical Mobile Satellite Service Earth Stations in Frequency Bands Allocated to the Fixed Satellite Service

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Communications Commission (FCC) proposes and seeks comment on a regulatory framework for licensing the operation of Aeronautical Mobile Satellite Service (AMSS) systems to communicate with fixed-satellite service (FSS) networks in the Ku-Band frequencies. Aircraft Earth stations (AES) in the AMSS can be used to provide broadband telecommunications services on passenger, government, and executive/private aircraft. This Notice of Proposed Rulemaking (NPRM) also seeks comments on licensing methods for AES terminals that will minimize the burdens upon applicants and licensees, while maintaining operational limitations necessary to avoid harmful interference.

DATES: Comments are due on or before July 5, 2005, and reply comments are due on or before August 3, 2005.

ADDRESSES: All comments should be addressed to the Office of the Secretary, Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554. In addition to filing comments with the Secretary, a copy of any Paperwork Reduction Act (PRA) comments on the information collection(s) proposed herein should be submitted to Judith B. Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to *Judith-B.Herman@fcc.gov*, and to Kristy L. LaLonde, OMB Desk Officer, Room 10234 NEOB, 725 17th Street, NW., Washington, DC 20503 via the Internet to *Kristy_L._LaLonde@omb.eop.gov* or by fax to 202–395–5167. Electronic comments may be filed using the Commission's Electronic Comment Filing System (ECFS). Comments filed though the ECFS can be sent as an electronic file via Internet to *http://www.fcc.gov/cgb/ecfs/*. All other filings must be sent to the Office of the Secretary, Federal Communications Commission, 445 12th St., SW., Room TW–B204, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Arthur Lechtman, (202) 418–1465, Satellite Division, International Bureau, Federal Communications Commission, Washington, DC 20554. For additional information concerning the information collection(s) contained in this document, contact Judith B. Herman at 202–418–0214, or via the Internet at *Judith-B.Herman@fcc.gov*.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Proposed Rulemaking* (NPRM) IB Docket No. 05–20, FCC 05–14, adopted January 18, 2005, released on February 9, 2005, and corrected by erratum on February 18, 2005. The full text of the *Second Report and Order* is 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 may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–488–5300, facsimile 202–488–5563, or via e-mail *FCC@BCPIWEB.com*. This NPRM may contain proposed new information collections subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. The PRA implications of the Aeronautical Mobile Satellite Service (AMSS) NPRM are unknown at this time. We are seeking comment from the public on the regulatory framework for AMSS. The comments from the public will impact the PRA requirements of the new AMSS service. Therefore, we plan to address the PRA issues during the final stage of the rulemaking.

The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due June 20, 2005. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), we seek specific comment on how we might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

Summary of Notice of Proposed Rulemaking

1. On February 9, 2005, the Commission released the *Notice of Proposed Rulemaking* (''*NPRM*'') in the Aeronautical Mobile Satellite Service proceeding (IB Docket No. 05–20). In this *NPRM*, the Commission makes proposals and seeks comment on a regulatory framework for licensing the operation of Aeronautical Mobile Satellite Service (AMSS) systems to communicate with fixed-satellite service (FSS) networks in the Ku-Band frequencies. (For purposes of this *NPRM*, the ''conventional'' Ku-band refers to frequencies in the 11.7–12.2 GHz (downlink) and 14.0–14.5 GHz (uplink) bands and excludes the so-called ''extended Ku-band'' at 12.75–13.25 GHz, 13.75–14.0 GHz, 10.7–10.95 GHz, 10.95–11.2 GHz, 11.2–11.45 GHz, and 11.45–11.7 GHz. The ''conventional'' Ku-bands are allocated on a primary basis to the FSS. *See*

generally 47 CFR 2.106). Aircraft Earth stations (AES) in the AMSS can be used to provide broadband telecommunications services on passenger, government, and executive/private aircraft. The Commission's goal is to promote more efficient use of the spectrum while protecting and providing regulatory certainty to the existing primary allocations, including the fixed satellite service (FSS) operators, and sharing spectrum with other secondary operations in these frequency bands, including government space research (SRS) stations. The Commission's proposals would enable important new communications services to be provided to crew and passengers on board aircraft. They would also protect existing terrestrial FS and FSS operations from harmful interference from AMSS stations and allow for future growth of FS and FSS networks. With regard to the secondary government space research stations and radio astronomy operations in parts of the Ku-Band, the Commission's proposals would provide protection to existing and accommodate future stations of these national assets. The proposals also seek to establish a regulatory scheme that could enable foreign-licensed AES terminals to operate in the United States airspace without causing harmful interference to domestic operations.

2. The *NPRM* seeks comment on a number of spectrum allocation issues concerning AES uplinks in the 14.0–14.5 GHz band and downlinks in the 11.7–12.2 GHz band. The Commission also asks for comment on whether AMSS operations should be permitted on a non-protected basis in portions of the ''extended'' Ku-band (10.95–11.2 and 11.45–11.7 GHz bands). Space research services (for both Federal and non-Federal government use) are allocated to the 14.0–14.2 GHz sub-band on a secondary basis. The Commission recognizes the importance of protecting these space research facilities from receiving harmful interference, and seeks comment on a proposal that, as a prerequisite to licensing, AMSS operations in the 14.0–14.5 GHz band be coordinated with the National Telecommunications and Information Administration (NTIA) to resolve any potential concerns regarding space research facilities. The Commission also seeks comment on a coordination process with respect to future NASA Tracking and Data Relay Satellite System (''TDRSS'') sites in the space research service.

3. The Radio Astronomy Service (RAS) is allocated on a secondary basis internationally in the 14.47–14.5 GHz band, and pursuant to footnote US203 of the U.S. Table of Frequency Allocations, radio astronomy observations of the formaldehyde line frequencies are permitted in this band at certain sites. The Commission recognizes the importance of radio astronomy for studying the universe and realizes that ubiquitous airborne AES terminals have the potential to interfere significantly with RAS sites on the ground. With this is in mind, the Commission proposes that, as a prerequisite to licensing, AMSS operations in the 14.0–14.5 GHz band be coordinated with the NTIA to resolve any potential concerns regarding radio astronomy facilities. The Commission seeks comment on this proposal and on whether, and if so how, AMSS licensees should coordinate their operations with future RAS sites.

4. The Commission proposes to require AMSS operators to protect FSS incumbents through limits on off-axis effective isotropically radiated power density and to cease operations if the AES antenna malfunctions or otherwise causes harmful interference to FSS networks. In addition, the Commission proposes footnotes to the U.S. Table of Frequency Allocations to recognize AMSS as an application of the FSS with secondary status in the uplink/transmit band and primary status in the downlink/receive band. The Commission also proposes to require AMSS operators to collect and maintain aircraft tracking data to assist in identifying and resolving sources of interference. The Commission also seeks comment on methods for system licensing (consisting of AMSS hub stations and/or blanket licensing for AES earth stations) in order to give Ku-band AMSS operators greater flexibility in structuring their operations. Finally, the Commission proposes a regulatory framework that would enable foreign-licensed AESs to operate in the United States airspace without causing harmful interference to domestic operations.

5. The proposed licensing procedures described above for Ku-band AMSS reflect the Commission's interest in providing regulatory certainty to both new and incumbent operators in the Ku frequency band. The proposals set forth in this *NPRM* are designed to: (1) Address existing government, space research, RAS, and FSS operations that may be affected by AES terminals; (2) allow for future growth of FSS networks; (3) establish rules and a regulatory framework that minimize the regulatory burden on AMSS licensees to the extent possible; (4) promote more efficient use of the spectrum by permitting new uses of the band by AES terminals, thereby enabling important new communications services to be provided to consumers on board aircraft. The Commission seeks comment on each of the matters set forth above.

Procedural Matters

Ex Parte Presentations

This proceeding shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's ex parte rules. Persons making oral ex parte presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. Other rules pertaining to oral and written presentations are set forth in § 1.1206(b) of the Commission's rules as well.

Initial Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act of 1980 (RFA), *see* 5 U.S.C. 601–612, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. Law n. 104–121, Title II, 110 Stat. 857 (1996), and 5 U.S.C. 605(b), the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this Service Rules and Procedures to Govern the Use of Aeronautical Mobile Satellite Service Earth Stations in the Frequency Bands Allocated to the Fixed Satellite Service, Notice of Proposed Rulemaking (*NPRM*). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *NPRM* provided in paragraph 73 of the *NPRM*. The Commission will send a copy of the *NPRM*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the *NPRM* and IRFA (or summaries thereof) will be published in the **Federal Register**.

A. Need for, and Objectives of, the Proposed Rules

In this *NPRM* the Commission makes proposals and seeks information on measures to provide a level of regulatory certainty to government, space research, radio astronomy, and fixed satellite service (FSS) operators regarding operations of the Aeronautical Mobile Satellite Service (AMSS). As discussed in greater detail below, the Commission

proposes rules and procedures to license aeronautical earth stations (AES) for operation in the Ku-band similar to the Commission's current licensing rules for very small aperture terminals (VSATs) that operate in the Ku-band, with appropriate modifications. However, rather than propose rules requiring minimum earth station antenna sizes and power limits, the NPRM proposes an off-axis EIRP envelope that, if adopted, would give AES operators more flexibility over their operations. This off-axis EIRP envelope proposal would provide for a minimally intrusive licensing regime for AESs that would maximize the efficient use of the Ku-band spectrum, by allowing a new service to be provided in that band, while respecting the legitimate expectations of incumbent operators. Establishing a licensing regime for AMSS also facilitates provision of a new service in the Ku-band, which would also advance the Commission's continuing effort to provide licensees with greater authority to most efficiently use of the spectrum that they occupy.

It is the Commission's view that if adopted, the off-axis EIRP licensing methodology proposed in the *NPRM* would benefit businesses both large and small by streamlining the process for obtaining authority from the Commission to provide AMSS service, which currently must be obtained on a case-by-case basis. The proposed procedures would provide license terms of fifteen years and would permit parties to seek authorization using simplified procedures. The proposed procedures would also require AMSS operators to provide aircraft tracking information to the Commission upon request. This would benefit businesses large and small by providing businesses that might be affected by AMSS operations with a simple, clear mechanism with minimal administrative burden to resolve any possible claims of harmful interference resulting from those operations.

B. Legal Basis

The *NPRM* is adopted pursuant to sections 1, 4(i), 4(j), 7(a), 301, 303(c), 303(f), 303(g), 303(r), 303(y), and 308 of the Communications Act of 1934, as amended, *47 U.S.C. 151, 154(i), 154(j), 157(a), 301, 303(c), 303(f), 303(g), 303(r), 303(y), 308.*

C. Description and Estimate of the Number of Small Entities To Which the Proposals Will Apply

The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). Below, we further describe and estimate the number of small entity licensees that may be affected by the adopted rules.

Satellite Telecommunications. The SBA has developed a small business size standard for Satellite Telecommunications Carriers, which consists of all such companies having $12.5 million or less in annual receipts. According to Census Bureau data for 1997, there were 324 firms in the category Satellite Telecommunications, total that operated for the entire year. Of this total, 273 firms had annual receipts of $5 million to $9,999,999 and an additional 24 firms had annual receipts of $10 million to $24,999,990. Thus, under this size standard, the majority of firms can be considered small.

Space Stations (Geostationary). Commission records reveal that there are 15 space station licensees. We do not request nor collect annual revenue information, and thus are unable to estimate of the number of geostationary space stations that would constitute a small business under the SBA definition cited above, or apply any rules providing special consideration for Space Station (Geostationary) licensees that are small businesses.

Fixed Satellite Transmit/Receive Earth Stations. Currently there are approximately 3,390 operational fixed-satellite transmit/receive earth stations authorized for use in the C- and Ku-bands. The Commission does not request or collect annual revenue information, and thus is unable to estimate the number of earth stations that would constitute a small business under the SBA definition.

Cellular and Other Wireless Telecommunications. The SBA has developed a small business size standard for Cellular and Other Wireless Telecommunication, which consists of all such firms having 1,500 or fewer employees. According to Census Bureau data for 1997, in this category there was a total of 977 firms that operated for the entire year. Of this total, 965 firms had employment of 999 or fewer employees, and an additional twelve firms had employment of 1,000 employees or more. Thus, under this size standard, the majority of firms can be considered small.

Paging. The SBA has developed small business size standard for Paging, which consists of all such firms having 1,500 or fewer employees. According to Census Bureau data for 1997, in this category there was a total of 1,320 firms that operated for the entire year. Of this total, 1,303 firms had employment of 999 or fewer employees, and an additional seventeen firms had employment of 1,000 employees or more. Thus, under this size standard, the majority of firms can be considered small.

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

The proposed rules would, if adopted, require satellite telecommunications operators to establish a database for tracking the location of AES remote earth stations. This database would assist investigations of interference claims. The *NPRM* seeks comment on this proposal, including the effectiveness and utility of the proposal, and seeks comment regarding possible alternatives. The proposed rules, if adopted, would also require AMSS operators to name a point of contact to maintain information about aircraft location and frequencies used by AESs. Such information would assist in investigating interference claims. The Commission does not expect significant costs associated with these proposals, if adopted. Therefore, we do not anticipate that the burden of compliance would be greater for smaller entities.

The *NPRM* seeks comment on possible methods for coordinating AMSS operations with space research service and radio astronomy operations.

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

The RFA requires that, to the extent consistent with the objectives of applicable statutes, the analysis shall discuss significant alternatives such as: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage or the rule, or any part thereof, for small entities.

This *NPRM* solicits comment on alternatives for more efficient processing of aircraft earth station (AES) applications and simplifying AMSS procedures, for example, by migrating from non-conforming use licensing to a licensing method that would provide for licenses with terms of fifteen years. The *NPRM* also seeks comment on streamlining the application process for AMSS operations by permitting blanket licensing of multiple AES terminals in a single application, as an alternative to requiring all AESs to be licensed individually. Adoption of some of these proposals would simplify the application process for AESs and establish license terms consistent with other satellite-based services (such as Earth Stations on Vessels). Accordingly, the Commission believes that adoption of these proposed rules would benefit all AMSS applicants, including small entities, by significantly reducing the cost associated with obtaining and maintaining authority to operate an AMSS network.

As described above, the Commission also seeks comment on a number of alternative compliance and coordination processes. For example, the Commission seeks on whether to base the off-axis EIRP requirement on an aggregate limit or on a per-earth station limit. The Commission has taken care to consider the costs on business both large and small and has solicited comment on alternatives to its proposals.

F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

None.

Paperwork Reduction Act

This *NPRM* contains proposed new and modified information collection(s). The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection(s) contained in this *NPRM,* as required by the Paperwork Reduction Act of 1995, Public Law n. 104–13. Public and agency comments are due 60 days from date of publication of the NPRM in the **Federal Register**. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law n. 107–198, *see* 44 U.S.C. 3506(c)(4), we seek specific comment on how we might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

A copy of any comments on the information collections contained herein should be submitted to Judy Boley Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to *jbHerman@fcc.gov* and to Kristy L. LaLonde, OMB Desk Officer, Room 10234 NEOB, 725 17th Street, NW., Washington, DC 20503, via the Internet to *Kristy_L.LaLonde@omb.eop.gov,* or via fax at 202–395–5167.

Comment Filing Procedures

Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments in response to this *NPRM* no later than on or before 75 days after **Federal Register** publication. Reply comments to these comments may be filed no later than on or before 105 days after **Federal Register** publication. All pleadings are to reference IB Docket No. 05–20. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. Parties are strongly encouraged to file electronically. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24,121 (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.* Parties should transmit one copy of their comments to the docket in the caption of this rulemaking. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, 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 choosing to file by paper must file an original and four copies of each filing in IB Docket No. 05–20. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). 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. The Commission's mail contractor, Vistronix, Inc. will receive hand-delivered or messenger-delivered paper filings 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 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, Office of the Secretary, Federal Communications Commission.

Comments submitted on diskette should be on a 3.5 inch diskette formatted in an IBM-compatible format using Word for Windows or compatible software. The diskette should be clearly labeled with the commenter's name, proceeding (including the docket number, in this case, IB Docket No. 05–20), type of pleading (comment or 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.

All parties must file one copy of each pleading electronically or by paper to each of the following: (1) The Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (202) 488–5300, facsimile (202) 488–5563, or via e-mail at *FCC@BCPIWEB.COM.* (2) Arthur Lechtman, Attorney, Satellite Division, International Bureau, 445 12th Street, SW., Washington, DC 20554; e-mail *Arthur.Lechtman@fcc.gov.*

Comments and reply comments and any other filed documents in this matter may be obtained from Best Copy and Printing, Inc., in person at 445 12th Street, SW., Room CY–B402, Washington, DC 20554, via telephone at (202) 488–5300, via facsimile (202) 488–5563, or via e-mail at *FCC@BCPIWEB.COM.* The pleadings will be also available for public inspection and copying during regular

business hours in the FCC Reference Information Center, Room CY–A257, 445 Twelfth Street, SW., Washington, DC 20554 and through the Commission's Electronic Filing System (ECFS) accessible on the Commission's World Wide Web site, *http://www.fcc.gov.*

Comments and reply comments must include a short and concise summary of the substantive arguments raised in the pleading. Comments and reply comments must also comply with § 1.49 and all other applicable sections of the Commission's rules. All parties are encouraged to utilize a table of contents, and to include the name of the filing party and the date of the filing on each page of their submission. We also strongly encourage that parties track the organization set forth in this *NPRM* in order to facilitate our internal review process.

Commenters who file information that they believe is proprietary may request confidential treatment pursuant to § 0.459 of the Commission's rules. Commenters should file both their original comments for which they request confidentiality and redacted comments, along with their request for confidential treatment. Commenters should not file proprietary information electronically. *See Examination of Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission, Report and Order, 13 FCC Rcd 24816 (1998),* Order on Reconsideration, *14 FCC Rcd 20128 (1999).* Even if the Commission grants confidential treatment, information that does not fall within a specific exemption pursuant to the Freedom of Information Act (FOIA) must be publicly disclosed pursuant to an appropriate request. *See* 47 CFR 0.461; 5 U.S.C. 552. We note that the Commission may grant requests for confidential treatment either conditionally or unconditionally. As such, we note that the Commission has the discretion to release information on public interest grounds that does fall within the scope of a FOIA exemption.

Further Information

For further information regarding this proceeding, contact Arthur Lechtman, Attorney, Satellite Division, International Bureau at (202) 418–0719. Information regarding this proceeding and others may also be found on the Commission's Web site at *http://www.fcc.gov.*

Ordering Clauses

Accordingly, *It is ordered that,* pursuant to the authority contained in sections 1, 4(i), 4(j), 7(a), 301, 303(c), 303(f), 303(g), 303(r), 303(y), and 308 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 157(a), 301, 303(c), 303(f), 303(g), 303(r), 303(y), 308, this Notice of Proposed Rulemaking is adopted.

It is further ordered that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center shall send a copy of this Notice of Proposed Rulemaking, including the initial regulatory flexibility analysis, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with section 603(a) of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* (1981).

List of Subjects in 47 CFR Part 25

Satellites.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 05–7791 Filed 4–19–05; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition To Delist the Idaho Springsnail; 90-Day Finding on a Petition To List the Jackson Lake Springsnail, Harney Lake Springsnail, and Columbia Springsnail; and Initiation of a 5-Year Review for the Idaho Springsnail

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of two 90-day petition findings and initiation of status review for two 12-month findings and one 5-year review.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 90-day finding on a petition to remove (first petition) the Idaho springsnail (*Pyrgulopsis idahoensis*) from the Federal List of Endangered and Threatened Wildlife and Plants (List) pursuant to the Endangered Species Act (Act), as well as a 90-day finding on a petition to add (second petition) the Jackson Lake springsnail (*P. robusta*), Harney Lake springsnail (*P. hendersoni*), and Columbia springsnail (*P.* spp. *A*) to the List as endangered or threatened. We find the first petition presents substantial scientific information that delisting the Idaho springsnail may be warranted. We also find that the second petition presents substantial scientific information that listing the Jackson Lake springsnail, Harney Lake springsnail, and Columbia springsnail may be warranted.

We are requesting submission of any new information on the Idaho springsnail since its original listing as an endangered species in 1992, and information on the Jackson Lake springsnail, Harney Lake springsnail, and Columbia springsnail. Following this 12-month status review, we will issue 12-month findings on the petition to delist the Idaho springsnail and the petition to list the Jackson Lake springsnail, Harney Lake springsnail, and Columbia springsnail. Section 4(c)(2)(A) of the Act also requires a status review of listed species at least once every 5 years. We are therefore electing to conduct these reviews simultaneously. At the conclusion of these reviews, we will issue the 12-month findings on the petitions, as provided in section 4(b)(3)(B) of the Act, and make the requisite recommendation under section 4(c)(2)(B) of the Act based on the results of the 5-year review for the Idaho springsnail.

DATES: The finding announced in this document was made on April 20, 2005. To be considered in the 12-month findings for these delisting or listing petitions, or the 5-year review, comments and information should be submitted to us by June 20, 2005.

ADDRESSES: Data, information, comments, or questions concerning these petitions and our finding should be submitted to the Field Supervisor, Attention: Idaho Springsnail comments, Snake River Fish and Wildlife Office, 1387 S. Vinnell Way, Suite 368, Boise, ID 83709. Comments may also be faxed to 208/378–5262, or e-mailed to *fw1srbocomment@fws.gov*. Please include ''Idaho Springsnail Comments'' in the subject line for faxes and e-mails. Please submit electronic comments in ASCII file format, and avoid the use of special characters and encryption. The petitions, supporting data, and comments will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Steve Lysne, Fish and Wildlife Biologist, at the above address (telephone 208/378–5243 or e-mail *steve_lysne@fws.gov*).

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (Act) requires that

we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial data indicating that the petitioned action may be warranted. To the maximum extent practicable, we must make the finding within 90 days of our receipt of the petition, and must promptly publish the finding in the **Federal Register**. If we find substantial information exists to support the petitioned action, we are required to promptly commence a status review of the species (50 CFR 424.14). ''Substantial information'' is defined in 50 CFR 424.14(b) as ''that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted.'' Petitioners need not prove that the petitioned action is warranted to support a ''substantial'' finding; instead, the key consideration in evaluating a petition for substantiality involves demonstration of the reliability and adequacy of the information supporting the action advocated by the petition.

The factors for listing, delisting, or reclassifying species are described at 50 CFR 424.11. We may delist a species only if the best scientific and commercial data available substantiate that it is neither endangered nor threatened. Delisting may be warranted as a result of: (1) Extinction, (2) recovery, and/or (3) a determination that the original data used for classification of the species as endangered or threatened were in error.

In making these findings for the Idaho springsnail (*Pyrgulopsis idahoensis*), Jackson Lake springsnail (*P. robusta*), Harney Lake springsnail (*P. hendersoni*), and Columbia springsnail (*P.* spp. *A*), we rely on information provided by the petitioners and evaluate that information in accordance with 50 CFR 424.14(b). The content of these findings summarize that information included in the petition and that which was available to us at the time of the petition review. Our review for the purposes of a 90-day finding under section 4(b)(3)(A) of the Act and § 424.14(b) of our regulations is limited to a determination of whether the information in the petition meets the ''substantial scientific information'' threshold. We do not conduct additional research at this point, nor do we subject the petition to rigorous critical review. Rather, as the Act and regulations contemplate, at the 90-day finding, the key consideration in evaluating a petition involves demonstration of the reliability and adequacy of the information supporting the action advanced by the petition.

Our findings are that the petitions state a reasonable case for delisting (first petition) and listing (second petition) on their face based on the taxonomic information that is presented in the petitions. Thus, in these findings, we express no view as to the ultimate issue of whether the Idaho springsnail should be delisted, or whether the Jackson Lake springsnail, Harney Lake springsnail, and Columbia springsnail should be listed. We can come to a conclusion on those issues only after a more thorough review of the species' status. In that review, which will take approximately 9 more months, we will perform a rigorous critical analysis of the best available scientific information, not just the information in the petition. We will ensure that the data used to make our determination as to the status of the species is consistent with the Act and the Information Quality Act.

We listed the Idaho springsnail as endangered on December 14, 1992 (57 FR 59244). We determined that the free-flowing, cool water environments required by the Idaho springsnail were altered by deteriorating water quality due to reservoir development, river diversions, and habitat modification (57 FR 59244). The Idaho springsnail was described as existing in the main-stem Snake River from the C.J. Strike Reservoir (river mile 518) to Bancroft Springs (river mile 553), a nearly 80 percent reduction from the species' historic distribution in the Snake River based on the existing literature (Frest 1991). We published the Snake River Aquatic Species Recovery Plan, which included the Idaho springsnail, in 1995. Critical habitat has not been designated for the Idaho springsnail.

Review of Petitions

On June 28, 2004, we received a petition from the State of Idaho, Office of Species Conservation, and the Idaho Power Company requesting that the Idaho springsnail be removed from the List based on a taxonomic reappraisal that indicated it is no longer a separate species. The delisting petition cites a recent peer-reviewed article, published in *The Veliger*, titled ''Taxonomic Reappraisal of Species Assigned to the North American Freshwater Gastropod Subgenus *Natricola* (Rissooidea: Hydrobiidae)'' (Hershler and Liu 2004). Hershler and Liu (2004) evaluated the taxonomic status of the Idaho springsnail, Jackson Lake springsnail, Harney Lake springsnail, and Columbia springsnail and recommended placing all four species into *P. robusta* (Hydrobiidae: Walker 1908). The distribution of *P. robusta* is ''broadly ranging in the northwestern United States, including parts of the Snake-Columbia River basin and several closed basins in southeastern Oregon. Habitats include springs and spring-fed streams as well as large rivers'' Hershler and Liu (2004).

On August 5, 2004, we received a petition from Dr. Peter Bowler, the Biodiversity Conservation Alliance, Center for Biological Diversity, Center for Native Ecosystems, Western Watersheds Project, and The Xerces Society, requesting that the Jackson Lake springsnail, Harney Lake springsnail, and Columbia springsnail be added to the List. This listing petition cites habitat loss and degradation from spring development, domestic livestock grazing, groundwater withdrawal, water pollution, dams, predation, the introduction and spread of nonnative species, and inadequate Federal and State regulatory mechanisms as threats to the continued existence of these other three northwestern springsnail species. The listing petition also cites Hershler and Liu (2004) and their suggested taxonomic revision, and acknowledges that the Idaho springsnail, Jackson Lake springsnail, Harney Lake springsnail, Columbia springsnail may be one species (*Pyrgulopsis robusta*). However, the listing petition contends that Hershler and Liu (2004) overlooked key differences between the four species, and states that whether assessed individually or as one species, all four springsnails need the protection of the Act.

Hershler and Liu (2004) suggested three lines of evidence to support changing the taxonomic classification of the Idaho springsnail. Morphology, mitochondrial DNA sequences, and nuclear DNA sequences were used to evaluate the relationship between previously recognized species in the subgenus. Results from the morphology analysis found a significant difference between the ratio of shell height to height of body whorl between the Idaho springsnail and all other species tested. However, several other morphological metrics, including the position of the callus (hardened tissue) on the operculum (serves as a cover for the opening in the shell), the shape of the central cusp of the central teeth, the number of cusps on central teeth, notching of inner marginal teeth, number of cusps on outer marginal teeth, the male penial features, and female genitalia did not differ substantially. The genetic data found very little variation in the partial cytochrome c oxidase (COI) gene (mitochondrial DNA). Differences ranged from 0.0–0.8 percent (0–5 base

pairs) within the *Natricola* subgenus to 2.6–6.9 percent (16–43 base pairs) with outgroups in the genus *Pyrgulopsis*. This suggests that genetic variation within *Natricola* differed little compared to genetic variation between *Natricola* and other species of *Pyrgulopsis*. In addition, differences in the internal transcribed spacer (ITS–1) sequences (nuclear DNA) within the *Natricola* subgenus were substantially smaller (0.0–0.6 percent) compared to differences among other congeners (5.9–20.4 percent). These two lines of evidence suggest that differences among the four species are very small compared to differences between other recognized taxa within the larger genus.

The authors then contend that ''three independent data sets (morphology, mitochondrial, and nuclear DNA sequences) congruently suggest that these four *Natricola* snails do not merit recognition as distinct species according to various currently applied concepts of this taxonomic rank.''

In addition to the taxonomic revision, Hershler and Liu (2004) noted that the Jackson Lake springsnail was a former Service candidate for threatened or endangered species status. They state that it may be currently threatened by the presence of the exotic New Zealand mudsnail (*Potamopyrgus antipodarum*) in the Pacific Northwest. Also, Hershler and Liu (2004) noted that the Harney Lake springsnail is designated as a critically imperiled species by the Oregon Natural Heritage Program, and the middle Snake River population of the Idaho springsnail is genetically isolated from other populations.

Finding

We have reviewed the delisting and listing petitions and their supporting documents, as well as other information in our files. We find that the delisting petition and other information in our files present substantial information that delisting the Idaho springsnail may be warranted. We also find that the listing petition and other information in our files present substantial information that listing the Jackson Lake springsnail, Harney Lake springsnail, and Columbia springsnail may be warranted. We are initiating a status review of all four species. We will issue 12-month findings in accordance with section 4(b)(3)(B) of the Act as to whether or not delisting is warranted (first petition) and/or whether or not listing is warranted (second petition).

Five Year Review

Section 4(c)(2)(A) of the Act requires that we conduct a review of listed species at least once every 5 years. We are then, under section 4(c)(2)(B), to determine, on the basis of such a review, whether or not any species should be removed from the List (delisted), or reclassified from endangered to threatened, or threatened to endangered. Our regulations at 50 CFR 424.21 require that we publish a notice in the **Federal Register** announcing those species currently under active review. This notice announces our active review of the Idaho springsnail.

Public Information Solicited

We are requesting information on the Idaho springsnail for both the 12-month finding and the 5-year review, as we are conducting these reviews simultaneously. We are also requesting information on the Jackson Lake springsnail, Harney Lake springsnail, and Columbia springsnail.

When we make a finding that substantial information exists to indicate that listing or delisting a species may be warranted, we are required to promptly commence a review of the status of the species. To ensure that the status review is complete and based on the best available scientific and commercial information, we are soliciting any additional information, comments, or suggestions on the Idaho springsnail, Jackson Lake springsnail, Harney Lake springsnail, and Columbia springsnail from the public, State and Federal agencies, tribes, the scientific community, industry or environmental entities, or any other interested parties. Information sought includes any data regarding interactions with other populations, historical and current distribution, biology and ecology, ongoing conservation measures for the species or its habitat, and threats to the species or its habitat. We also request information regarding the adequacy of existing regulatory mechanisms.

The 5-year review considers all new information available at the time of the review. This review will consider the best scientific and commercial data regarding the Idaho springsnail that has become available since the current listing determination or most recent status review, such as:

(1) Species biology, including but not limited to population trends, distribution, abundance, demographics, genetics, and taxonomy, specifically regarding any key differences between the four subspecies;

(2) Habitat conditions, including but not limited to amount, distribution, and suitability;

(3) Conservation measures that have been implemented that benefit the species;

(4) Threat status and trends; and

(5) Other new information, data, or corrections, including but not limited to taxonomic or nomenclatural changes, identification of erroneous information contained in the List, and improved analytical methods.

If you wish to comment on either of the 12-month findings or 5-year review, you may submit your comments and materials to the Field Supervisor, Snake River Fish and Wildlife Office (see **ADDRESSES** section). Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Respondents may request that we withhold a respondent's identity, as allowable by law. If you wish to withhold your name or address, you must state this request prominently at the beginning of your comment. However, we will not consider anonymous comments. To the extent consistent with applicable law, we will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

References Cited

A complete list of all references cited in this finding is available, upon request, from the Snake River Fish and Wildlife Office (see **ADDRESSES** section).

Author

The primary author of this document is Steve Lysne (see **ADDRESSES** section).

Authority

The authority for this action is section 4 of the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: April 7, 2005.

Marshall P. Jones, Jr.,

Deputy Director, Fish and Wildlife Service.

[FR Doc. 05–7640 Filed 4–19–05; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register

Vol. 70, No. 75

Wednesday, April 20, 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

April 14, 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 collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@omb.eop.gov* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8681.

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.

Animal and Plant Health Inspection Service

Title: Self Certification Medical Statement.

OMB Control Number: 0579–0196.

Summary of Collection: The Secretary of Agriculture is responsible for ensuring consumers that food and farm products are moved from producer to consumer in the most efficient, dependable, economical, and equitable system possible. 5 CFR part 339 authorizes an agency to obtain medical information about the applicant's health status to assist management in making employment decisions concerning positions that have specific medical standards or physical requirements in order to determine medical/physical fitness. The Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture hires individuals each year in commodity grading and inspection positions. These positions involve arduous duties and work under conditions, around moving machinery, slippery surfaces, and high noise level. APHIS will collect information using the MRP–5 form (Self-Certification Medical Statement).

Need and Use of Information: The data is needed to obtain information from the applicant about his/her health and fitness in order to perform the duties of the position and assist management in making employment decisions concerning positions that have specific medical standards and physical requirements. Denial of the information would greatly hamper APHIS recruiting capability and adversely affect management's ability to facilitate hiring, placement, and utilization of qualified individuals into positions that have specific medical standards and physical requirements.

Description of Respondents: Individuals or households.

Number of Respondents: 300.

Frequency of Responses: Reporting: on occasion.

Total Burden Hours: 50.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 05–7833 Filed 4–19–05; 8:45 am]

BILLING CODE 3410–34–M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 05–018–1]

Notice of Request for Approval of an Information Collection

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: New information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request approval of a new information collection activity, the National Chronic Wasting Disease 2005 Study.

DATES: We will consider all comments that we receive on or before June 20, 2005.

ADDRESSES: You may submit comments by either 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. 05–018–1, 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. 05–018–1.

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: For information on the Chronic Wasting

Disease 2005 Study, contact Mr. Chris Quatrano, Management and Program Analyst, Centers for Epidemiology and Animal Health, VS, APHIS, 2150 Centre Avenue, Building B MS 2E6, Fort Collins, CO 80526; (970) 494–7207. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

SUPPLEMENTARY INFORMATION:

Title: National Animal Health Monitoring System; Chronic Wasting Disease 2005 Study.

OMB Number: 0579–XXXX.

Type of Request: Approval of a new information collection.

Abstract: The United States Department of Agriculture is responsible for protecting the health of our Nation's livestock and poultry populations by preventing the introduction and interstate spread of serious diseases and pests of livestock and for eradicating such diseases from the United States when feasible. In connection with this mission, the Animal and Plant Health Inspection Service (APHIS) operates the National Animal Health Monitoring System (NAHMS), which collects, on a national basis, statistically valid and scientifically sound data on the prevalence and economic importance of livestock and poultry disease risk factors.

NAHMS' national studies have evolved into a collaborative industry and government initiative to help determine the most effective means of preventing and controlling diseases of livestock. APHIS is the only agency responsible for collecting national data on livestock health. Participation in any NAHMS study is voluntary, and all data are confidential.

APHIS plans to initiate a national study titled the Chronic Wasting Disease (CWD) 2005 Study. The study will collect information from 5,600 cervid producers nationwide. The purpose of the CWD 2005 Study is to support the farmed/captive cervid industry by collecting baseline data to: (1) Describe general health and management practices; (2) describe the farmed/captive cervid industry; and (3) identify the most efficient ways to contact producers for outreach purposes. The potential benefit to the industry from the CWD 2005 Study is increased information on the impact of general health and management practices.

CWD is a fatal, neurological disease that occurs in deer and elk populations. It belongs to the family of diseases known as transmissible spongiform encephalopathies (TSEs), which includes bovine spongiform encephalopathy (BSE) in cattle, scrapie in sheep and goats, and both variant Creutzfeldt-Jacob Disease (vCJD) and Creutzfeldt-Jacob Disease in humans. Although all TSEs are similar, CWD only affects deer and elk. A herd usually presents evidence of CWD infection within 5 years of exposure through the presence of sick or dead animals.

APHIS is establishing a voluntary program for farmed/captive cervid herds that will track how long a particular herd has been closed and monitored for CWD. The CWD 2005 Study will include farms that choose to enroll in the CWD certification program. In conjunction with this effort, NAHMS plans to use this opportunity to collect data from cervid producers within the United States as producers enroll in the CWD certification program. APHIS will analyze information from this study and prepare descriptive reports and information sheets that will be disseminated to cervid producers, stakeholders, academia, and other interested parties.

We are asking the Office of Management and Budget (OMB) to approve the national CWD 2005 Study.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate 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;

(2) Evaluate the accuracy of our estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; *e.g.*, permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 1 hour per response.

Respondents: Cervid producers.

Estimated annual number of respondents: 5,600.

Estimated annual number of responses per respondent: 1.

Estimated annual number of responses: 5,600.

Estimated total annual burden on respondents: 5,600 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

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.

Done in Washington, DC, this 14th day of April 2005.

Elizabeth E. Gaston,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E5–1861 Filed 4–19–05; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 05–016–1]

Notice of Request for Extension of Approval of an Information Collection

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection associated with proposed regulations for the payment of compensation in the event of an outbreak of foot-and-mouth disease in the United States.

DATES: We will consider all comments that we receive on or before June 20, 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. 05–016–1, 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. 05–016–1.

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: For information concerning the proposed regulations for payment of compensation if foot-and-mouth disease occurred in the United States, contact Dr. Mark Teachman, Senior Staff Veterinarian, Emergency Management Staff, VS, APHIS, 4700 River Road Unit 41, Riverdale, MD 20737; (301) 734–8908. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS* Information Collection Coordinator, at (301) 734–7477.

SUPPLEMENTARY INFORMATION:

Title: Foot-and-Mouth Disease Payment of Indemnity; Update of Provisions.

OMB Number: 0579–0199.

Type of Request: Extension of approval of an information collection.

Abstract: The Animal and Plant Health Inspection Service (APHIS) of the United States Department of Agriculture administers regulations at 9 CFR part 53 that provide for the payment of indemnity to owners of animals that are required to be destroyed because of foot-and-mouth disease (FMD), pleuropneumonia, rinderpest, exotic Newcastle disease, highly pathogenic avian influenza, infectious salmon anemia, spring viremia of carp, or any other communicable disease of livestock or poultry that in the opinion of the Secretary of Agriculture constitutes an emergency and threatens the U.S. livestock or poultry population. The regulations authorize payments based on the fair market value of the animals destroyed, as well as payments for their destruction and disposal. The regulations also authorize payments for materials that must be cleaned and disinfected or destroyed because of being contaminated by or exposed to disease.

As a result of a review of part 53 by APHIS, in part due to past outbreaks of FMD in the United Kingdom and elsewhere around the world, we proposed changes to the regulations to help ensure a successful control and eradication program in the event of an outbreak of FMD in the United States (*see* 67 FR 21934–21959, APHIS Docket No. 01–069–1, May 1, 2002). The proposed rule would require eligible persons to submit claims for compensation resulting from the destruction of animals and related expenses using forms approved by APHIS. Claimants would also be expected to provide any supporting documentation that would assist the Administrator in verifying the quantity and value of animals or materials destroyed and the costs of their disposition, and the costs of cleaning and disinfection.

We are asking the Office of Management and Budget (OMB) to approve this information collection for an additional 3 years.

The estimate below shows a minimal burden of 1 hour total because we believe that an FMD outbreak in the United States is unlikely. Therefore, we currently are not collecting information and do not plan to collect information unless an outbreak of FMD occurs. In that event, we would review the estimated number of respondents and estimated burden based on the number of expected respondents in that situation.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate 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;

(2) Evaluate the accuracy of our estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; *e.g.*, permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 1 hour per response.

Respondents: Owners of animals and materials destroyed, other claimants incurring costs for which compensation might be sought, and program support personnel including accredited veterinarians, State animal health officials, and local authorities who would be providing assistance in the event of a national animal disease emergency.

Estimated annual number of respondents: 1.

Estimated annual number of responses per respondent: 1.

Estimated annual number of responses: 1.

Estimated total annual burden on respondents: 1 hour. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

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.

Done in Washington, DC, this 14th day of April 2005.

Elizabeth E. Gaston,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E5–1862 Filed 4–19–05; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 05–004N]

Notice of Funding Opportunities With the Food Safety and Inspection Service for Food Safety Cooperative Agreements for Fiscal Year 2005

AGENCY: Food Safety and Inspection Service.

ACTION: Notice of funding opportunities for fiscal year 2005.

SUMMARY: The Food Safety and Inspection Service (FSIS) is soliciting proposals for cooperative agreement projects to be funded in fiscal year 2005. Proposals should be made in one or more of the cooperative agreement program areas described in this notice.

DATES: Proposals must be submitted by June 20, 2005.

SUPPLEMENTARY INFORMATION:

Background

FSIS continuously seeks new ideas and strategies to reduce the incidence of foodborne illnesses associated with meat, poultry, and egg products and protect the food supply. Agency innovations, notably those associated with the implementation of Hazard Analysis and Critical Control Point (HACCP) systems, have helped reduce foodborne illnesses in recent years. FSIS seeks to achieve additional reductions in foodborne illnesses, and to enhance food security, through further improvements in FSIS operations and

through joint efforts with partner agencies and organizations.

To achieve this goal, FSIS is authorized to use cooperative agreements to reflect a relationship between FSIS and other Federal agencies, States, or cooperators to carry out educational programs or special studies to improve the safety of the nation's food supply (Pub. L. 108–7, sec. 713, 117 Stat. 39). Also, FSIS has been directed to further develop the Food Emergency Response Network, a network of Federal, State and local laboratories that provides the nation the analytic capabilities and capacity it needs to cope with agents threatening the food supply (Pub. L. 108–447; H.R. Conf. Rpt. 108–792).

Risk analyses have shown that the safety of food is affected by hazards throughout the farm-to-table continuum. FSIS alone does not have the resources to address and ameliorate all hazards. FSIS seeks partners to assist in the development of materials that will have a national impact on public health. In keeping with its July 2004 strategy paper ''Fulfilling the Vision, Initiatives in Protecting Public Health,'' FSIS will engage in cooperative projects that will achieve measurable enhancement of the Nation's public health through food safety.

With the goal of making demonstrable improvements in public health through further science-based reductions in the incidence of foodborne disease and hazards associated with meat, poultry, and egg products, and to enhance food defenses through improved State and local government laboratory participation in the Food Emergency Response Network, FSIS will fund cooperative agreements in the following areas:

1. *Food animal production, transportation, and marketing.* Projects would develop and implement producer education programs that promote the use of best practices and interventions that reduce the potential for pathogens and other hazards borne by livestock and poultry to be introduced into meat, poultry, and egg products produced from those animals. An example would be a project to develop practical methods for controlling Salmonella or pathogenic E. coli on the farm to decrease the prevalence of those bacteria at slaughter.

2. *Small and very small inspected meat, poultry, or egg product establishments.* Projects would assist small plants (fewer than 500 employees) and very small plants (10 or fewer employees, or less than $2.5 million in annual sales), which often have limited technical and financial resources with which to comply fully with Federal inspection requirements. FSIS seeks to develop food safety training and educational programs and materials to reflect the needs of diverse customers and constituents with specific food safety concerns. The Nation's diverse population is reflected in its diverse food industry, which presents challenges for regulatory authorities, who must communicate effectively with them on a range of food safety issues. Projects would equip FSIS and its food safety partners to better overcome language and cultural barriers in delivering essential food safety messages to these firms. Projects would help FSIS and state meat and poultry inspection program officials identify and address food safety and public health concerns associated with particular geographic regions or specific minority populations. FSIS is seeking to develop new and innovative materials that cover topics such as Listeria monocytogenes in ready-to-eat meat and poultry products, validation of pathogen controls in small plants, assessing the effectiveness of food safety systems, and building on lessons learned from HACCP systems.

3. *Retail stores, food service establishments, and other inspection-exempt small businesses processing or handling meat, poultry, and egg products.* Projects would assist State and local agencies to promote, and food businesses under their jurisdiction to adopt, appropriate controls and interventions to ensure that inspection-exempt meat and poultry products being produced are safe and wholesome and that inspected meat and poultry products being handled and prepared remain safe and wholesome for consumers. Projects may address State and local retail inspectors' needs for tools to ensure the safety of meat and poultry processed or handled at retail, reducing the potential for Listeria monocytogenes contamination of ready-to-eat meat and poultry products, and ways to leverage current Federal, State, and local food safety activities to more effectively protect consumers.

4. *Applications of new technologies that will permit small and very small meat, poultry, and egg product establishments to produce safer products.* Projects would assist small and very small plants to adapt and use new technologies, including interventions, processes, and systems, to enhance product safety.

5. *Enhancement of laboratory testing capability of the Food Emergency Response Network for microbiological threat agents.* Cooperative agreements will develop programs to assist State and local laboratories to augment microbiological threat agent testing capacities and increase the number of member laboratories that are able to perform threat agent testing for the network. The agreements will enhance laboratories' ability to analyze for microbiological threat agents using FERN methods and improve laboratory capacities for surveillance and outbreak response. The agreements will support training in FERN threat agent methods and the purchase of supplies and equipment required by the methods. After training and demonstration of proficiency, laboratories will participate in validation studies with various food matrices as well as surveillance activities sponsored by FERN.

FSIS expects to allocate approximately $2,500,000 to fund cooperative agreements in these areas this fiscal year. The approximate amount available for each area, and the range in dollars for proposed cooperative projects, is provided below. Academic institutions; State, local and tribal government agencies; and non-profit organizations are invited to submit brief proposals (one to two pages) for cooperative agreements in any of the areas described. These proposals will be reviewed by FSIS. If reviewers find that the proposals would further the food safety and public health goals of FSIS, are applicable nationwide to targeted audiences, can be reproduced and disseminated, and reflect new materials or approaches, submitters will be invited to further develop the proposals for consideration as cooperative agreements with FSIS, as funding is available.

Proposals are due June 20, 2005. FSIS will review and respond to proposals by August 3, 2005. Unlike typical Federal grants, cooperative agreements involve a Federal agency's active participation with the cooperator during both project development and project execution. Work products are intended to be available for public use nationwide. The criteria used by FSIS to assess proposals are listed for each cooperative agreement program area. Cooperators whose proposals are selected for further project development will need to discuss and reach agreement with FSIS on project details to permit establishment of a cooperative agreement no later than July 30, 2005.

All proposals should address the following points:

- Project description, including specific goals, timeline, and deliverables
- Description of national public benefit expected, including expected utility of work products, for example, training manuals, CDs, and videos

• Projected costs, including cooperator contributions
• Projected performance measures
• Primary contact, principal investigator, and other likely participants, and
• Public domain; work products may be freely reproduced and distributed by FSIS.

Multi-year projects will be considered, but they are subject to annual renewal and may be affected by changes in FSIS' annual budget. The number of projects funded each year is determined by the number of proposals received, the extent to which they will further the food safety and public health goals of the Agency, the performance of ongoing projects, and funding availability.

Proposals are being solicited for fiscal year 2005 for the following five cooperative agreement program areas:

1. *Food animal production, transportation, and marketing*

Description: Cooperative agreements will support State-level partnerships to bring together food animal producers, veterinarians, Extension specialists, State and Federal animal health officials, and State and Federal public health officials to provide information and education to food animal producers. Partnerships will develop and distribute to producers educational materials that strengthen food safety through adoption of animal production practices that support pathogen reduction and residue avoidance in food animals. State food safety partnerships will provide a continuing non-regulatory infrastructure for information sharing among all levels of government and the food animal industries and will enhance and recognize Quality Assurance Programs (QAP) as a basic element of pre-harvest food safety.

Funding Level: The total level for fiscal year 2005 is approximately $500,000. Agreements usually will not exceed $50,000.

Evaluation Criteria: Proposals for funding will be ranked in consideration of certain factors. They are, in order of significance:

• Proposal's feasibility and relevance to pre-harvest food safety
• Participation by State animal health or public health officials
• Participation by food animal industry leaders
• Special animal health or food safety needs of industry
• Demonstrated ability to develop and deliver to producers information on food safety awareness and safe production practices
• Food animal population affected
• Cooperator's past performance in animal and egg production food safety cooperative agreements, and
• Geographic distribution of States (need for national presence).

Submit Proposals to: john.ragan@fsis.usda. Although electronic submissions are encouraged, proposals also may be mailed to John R. Ragan, D.V.M., Animal and Egg Production Food Safety Staff, Zoonotic Diseases and Residue Surveillance Division, Office of Public Health Science, FSIS, USDA, 1400 Independence Avenue, SW., Room 343 Aerospace Building, Washington, DC 20250–3700.

FOR FURTHER INFORMATION CONTACT: John R. Ragan, D.V.M., (202) 690–1277, or Sibyl Wright, (202) 720–4923, *sibyl.wright@fsis.usda.gov*, of the Animal and Egg Production Food Safety Staff.

2. *Small and very small inspected meat, poultry or egg product establishments.*

Description: Cooperative agreements will provide outreach to constituencies involved in FSIS-regulated activities, principally small and very small establishments and establishments in tribal and other underserved areas. Projects support training, education, and outreach that will promote more effective use of HACCP systems, appropriate responses to emerging food safety and food security concerns, understanding of the latest information on foodborne illness and hazards, availability of new procedures and technologies for hazard avoidance and mitigation, and security guidance.

Funding Level: The total level is approximately $250,000. Agreements typically range from $10,000 to $30,000. Larger amounts may be considered for compelling projects.

Evaluation Criteria: Proposals for funding will be ranked in consideration of certain factors. They are, in order of significance:

• Responds to the needs of small and very small plants
• Provides for measurable, documented results
• Provides a degree of innovation
• Assists small and very small plants to maintain effective HACCP systems, produce safe products, and otherwise comply with Federal regulations
• Provides a deliverable product that can be easily shared and is applicable to a wide audience. For example, the project will result in information or materials and be presented in a format that can be used by FSIS and its partners to improve food safety and impact public health, and
• Cooperator agrees to contribute significant resources to the project.

Submit Proposals to: kathleen.barrett@fsis.usda.gov. Although electronic submission is encouraged, proposals also may be mailed to Kathleen Barrett at Strategic Initiatives, Partnerships and Outreach Staff, FSIS, USDA, 1400 Independence Avenue, SW., Room 405 Aerospace Building, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Kathleen Barrett, Strategic Initiatives, Partnerships and Outreach Staff, at (202) 690–6644.

3. *Retail stores, food service establishments, and other inspection-exempt small businesses processing or handling meat, poultry, and egg products.*

Description: Projects will promote adoption of practices by small businesses, in particular retail and food service establishments, to reduce or eliminate food safety hazards to foods under their control. Projects are typically aimed at enhancing State, local, or tribal government food protection agencies' outreach capabilities and ability to make measurable improvements in food safety in support of FSIS' national public health mission and goals.

Funding Level: The total level is $250,000. Agreements typically range from $20,000 to $50,000. Larger amounts may be considered for compelling projects.

Evaluation Criteria: Proposals for funding will be ranked in consideration of certain factors. They are, in order of significance:

• Contributes to adoption by firms producing or handling meat, poultry, and egg products of the best available practices for controlling food safety hazards in their commercial environment.
• Provides State and local food inspectors tools for ensuring the safety of meat and poultry processed or handled at retail.
• Leverages current Federal, State, and local food safety activities to more effectively protect consumers.
• Provides a degree of innovation.
• Provides a deliverable product that is transferable; that is, the project will result in information or materials useful for food safety in other jurisdictions.
• Responds to needs of underserved areas or populations.
• Involves collaboration among interested entities; that is, the project involves industry, academia, Extension, and consumer groups as well as government agencies (involvement of a state food safety task force is desirable).

• Cooperator agrees to contribute significant resources to the project.

• Reduces the potential for product contamination, in particular, Listeria contamination of ready to eat foods.

Submit Proposals to: ralph.stafko@fsis.usda.gov. Although electronic submissions are encouraged, proposals also may be mailed to Ralph Stafko, Strategic Initiatives, Partnerships, and Outreach Staff, FSIS, USDA, 1400 Independence Avenue, SW., 405 Aerospace Building, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Ralph Stafko, Strategic Initiatives, Partnership, and Outreach Staff, at (202) 690–6520.

4. *New Technology that will permit small and very small meat, poultry and egg product establishments to produce safer products.*

Description: Cooperative agreements will promote new technologies or new adaptations of technologies, including interventions, processes, or systems, that will enhance the ability of small and very small plants to produce safe and wholesome meat, poultry, and egg products.

Funding Level: The total is approximately $500,000. Agreements will range from $25,000 to $75,000. Larger contract proposal amounts may be considered for certain projects that address FSIS food safety priorities.

Evaluation Criteria: Proposals for funding will be ranked in consideration of certain factors. They are, in order of significance:

• Helps small and very small plants meet their HACCP and food safety requirements.

• Helps small and very small plants to understand how to demonstrate that a new technology complies with Federal inspection requirements.

• Provides a degree of innovation.

• Applies new research and technologies that address current food safety and public health concerns, such as properly handling and labeling products that contain ingredients that are known allergens.

• Provides deliverable products that are easily transferable, such as videos, training programs, and flow charts. The project will result in information or materials useful to small and very small plants to improve food safety.

For example, the subjects of proposals may include:

• Antimicrobial or other kinds of interventions to reduce or eliminate E. coli 0157:H7 in ground meat products.

• Listeria monocytogenes post-lethality treatments for ready-to-eat products.

• The relationship between the level of Salmonella enteritidis in eggs and egg products and the molting of poultry.

• The relationship between the level of Salmonella enteritidis and the temperature at which eggs have been held from the day of lay until the day of processing.

• Salmonella growth and reduction in shelf-stable ready-to-eat products.

• Cost-effective mechanisms to determine the temperature of products while they are being shipped.

• Allergens, food sensitivities, and intolerances in meat and poultry products; development of a training program for small and very small plants to help with the reassessment of their HACCP programs as they pertain to any ingredient that may be an allergen.

• Inoculation challenge studies on non-thermally processed ready-to-eat products; for example, validation studies for dry cured chorizo, basturma, prosciutto ham, and pancetta.

• The amount of pathogen growth, such as E. coli O157:H7 and Salmonella, on livestock carcasses during the cooling process, and the development of easily understood predictive microbial models.

• The minimum chamber relative humidity needed to ensure that the moisture level on the product surface is adequate to achieve the desired lethality without increasing the heat resistance of bacterial pathogens (for example, Salmonella spp.).

• Alternative methods, such as antimicrobial packaging, to achieve surface lethality for products that had been exposed to the environment after lethality treatment.

Submit Proposals to: shaukat.syed@fsis.usda.gov. Although electronic submissions are encouraged, proposals also may be mailed to Shaukat H. Syed, D.V.M., Director, New Technology Staff, FSIS, USDA, 1400 Independence Avenue, SW., Room 2932, South Building, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Howard L. Early, D.V.M., New Technology Staff, at (202) 205–0675.

5. *Enhancement of laboratory testing capability of the Food Emergency Response Network for microbiological threat agents.*

Description: The Food Emergency Response Network (FERN) is composed of State and local government regulatory laboratories with varying capacities to perform the testing of threat agents. Cooperative agreements will develop programs to assist State and local laboratories to augment microbiological threat agent testing capacities and increase the number of member laboratories that are able to perform threat agent testing for the network. The agreements will enhance laboratories' ability to analyze for microbiological threat agents using FERN methods and improve laboratory capacities for surveillance and outbreak response. The agreements will support training in FERN threat agent methods and the purchase of supplies and equipment required by the methods. After training and demonstration of proficiency, laboratories will participate in validation studies with various food matrices as well as surveillance activities sponsored by FERN.

Funding Level: The total level is approximately $1,000,000. Agreements typically range from $50,000 to $100,000.

Evaluation Criteria: Proposals for funding will be ranked in consideration of certain factors. They are, in order of importance:

• Includes provisions for measurable, documented results that may be shared with State and local laboratories, FSIS, or its agents.

• Provides information useful for the testing of threat agents in food.

• Possesses basic food analytic resources to implement the agreement.

• States' willingness to participate in method validation, proficiency testing, and surveillance programs.

Submit Proposals to: Wayne Ziemer, FERN, FSIS, 950 College Station Road, Athens, Georgia 30605; telephone (706) 546–3591; facsimile (706) 546–3518; *wayne.ziemer@fsis.usda.gov.*

FOR FURTHER INFORMATION CONTACT: Frankie J. Beacorn, Biological Food Security and Emergency Branch, Food Emergency Response Network Division, FERN, FSIS, USDA, 950 College Station Road, Athens, Georgia 30677; telephone (706) 546–3578; facsimile (706) 546–3518; *frankie.beacorn@fsis.usda.gov.*

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to ensure that the public and in particular minorities, women, and persons with disabilities are aware of this notice, FSIS will announce it on-line through the FSIS Web page located at *http://www.fsis.usda.gov/regulations/2005_Notices_Index/.*

FSIS also will make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and other

types of information that could affect or would be of interest to constituents and stakeholders. The update is communicated via Listserv, a free electronic mail subscription service consisting of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals who have asked to be included. The update is available on the FSIS Web page. Through Listserv and the Web page, FSIS is able to provide information to a much broader, more diverse audience.

In addition, FSIS offers an electronic mail subscription service that provides an automatic and customized notification when popular pages are updated, including **Federal Register** publications and related documents. This service is available at *http://www.fsis.usda.gov/news_and_events/email_subscription/* and allows FSIS customers to sign up for subscription options across eight categories. Options range from recalls to export information to regulations, directives, and notices.

Customers can add or delete subscriptions themselves and have the option to protect their accounts with passwords.

Done at Washington, DC, on April 15, 2005.

Barbara J. Masters,

Acting Administrator.

[FR Doc. 05–7955 Filed 4–19–05; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Forest Service

Newspapers Used for Publication of Legal Notices in the Southwestern Region, Which Includes Arizona, New Mexico, and Parts of Oklahoma and Texas

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: This notice lists the newspapers that will be used by all Ranger Districts, Grasslands, Forests, and the Regional Office of the Southwestern Region to give legal notice for the availability for comments on projects under 35 CFR 215, notice of decisions that may be subject to administrative appeal under 36 CFR part 215 or part 217, and for the opportunities to object to proposed authorized hazardous fuel reduction projects under 36 CFR 218.4. Newspaper publication of notices of opportunities to comment, to appeal decisions, or to file objections, is in addition to mailings and direct notice made to those who have participated in the project planning by submitting comments and/or requesting notice.

DATES: Use of these newspapers for the purpose of publishing legal notice for comment and decision that may be subject to appeal under 36 CFR part 215 and part 217 and for opportunity to object under 36 CFR 218 shall begin on the date of this publication and continue until further notice.

ADDRESSES: Southwestern Region, ATTN: Regional Appeals Assistant, 333 Broadway SE., Albuquerque, NM 87102–3498.

FOR FURTHER INFORMATION CONTACT: Connie Smith, 505–842–3223.

SUPPLEMENTARY INFORMATION: Responsible Officials in the Southwestern Region will give legal notice of decisions that may be subject to appeal under 36 CFR part 215 or part 217, or give opportunity to object under 36 CFR 218 in the following newspapers which are listed by Forest Service administrative unit. Where more than one newspaper is listed for any unit, the first newspaper listed is the primary newspaper of record which publication date shall be used for calculating the time period to file comment, appeal or an objection.

Southwestern Regional Office

Regional Forester

Notices of Availability for Comment, Decisions and Objections affecting New Mexico Forests:—''*Albuquerque Journal*'', Albuquerque, New Mexico, for National Forest System Lands in the State of New Mexico and for any projects of Region-wide impact.

Regional Forester Notices of Availability for Comment and Decisions and Objections affecting Arizona Forests:—''*The Arizona Republic*'', Phoenix, Arizona, for National Forest System lands in the State of Arizona and for any projects of Region-wide impact.

Regional Forester Notices of Availability for Comment and Decisions and Objections affecting National Grasslands in New Mexico, Oklahoma, and Texas are listed by Grassland and location as follows: Kiowa National Grassland notices published in:—''*Union County Leader*'', Clayton New Mexico. Rita Blanca National Grassland in Cimarron County, Oklahoma notices published in:—''*Boise City News*'', Boise City, Oklahoma. Rita Blanca National Grassland in Dallam County, Texas notices published in:—''*The Dalhart Texan*'', Dalhart, Texas. Black Kettle National Grassland in Roger Mills County, Oklahoma notices published in:—''*Cheyenne Star*'', Cheyenne, Oklahoma. Black Kettle National Grassland in Hemphill County, Texas notices published in:—''*The Canadian Record*'', Canadian, Texas. McClellan Creek National Grassland in Gray County, Texas notices published:—''*The Pampa News*'', Pampa, Texas.

Arizona National Forests

Apache-Sitgreaves National Forests

Notices of Availability for Comment, Decisions and Objections by Forest Supervisor and Alpine Ranger District and Black Mesa Ranger District and Lakeside Ranger District and Springerville Ranger District are published in:—''*The White Mountain Independent''*, Show Low and Navajo County, Arizona.

Clifton Ranger District Notices are published in:—''*Cooper Era*'', Clifton, Arizona.

Coconino National Forest

Notices of Availability for Comment, Decisions and Objections by Forest Supervisor and Mogollon Ranger District and Mormon Lake Ranger District and Peaks Ranger District are published in:—''*Arizona Daily Sun*'', Flagstaff, Arizona. Red Rock Ranger District Notices are published in:—''*Red Rock News*'', Sedona, Arizona.

Coronado National Forest

Notices for Availability for Comments, Decisions and Objections by Forest Supervisor and Santa Catalina Ranger District are published in:—''*The Arizona Daily Star*'', Tucson, Arizona.

Douglas Ranger District Notices are published in:—''*Daily Dispatch*'', Douglas, Arizona.

Nogales Ranger District Notices are published in:—''*Nogales International*'', Nogales, Arizona.

Sierra Vista Ranger District Notices are published in:—''*Sierra Vesta Herald*'', Sierra Vista, Arizona.

Safford Ranger District Notices are published in:—''*Eastern Arizona Courier*'', Safford, Arizona.

Kaibab National Forest

Notices for Availability for Comments, Decisions and Objections by Forest Supervisor and North Kaibab District and Tusayan District and Williams District Notices are published in:—''*Arizona Daily Sun*'', Flagstaff, Arizona.

Prescott National Forest

Notices for Availability for Comments, Decisions and Objections by Forest Supervisor and Bradshaw Ranger District and Chino Valley Ranger

District and Verde Ranger District are published in:—''*Prescott Courier*'', Prescott, Arizona.

Tonto National Forest

Notices for Availability for Comments, Decisions and Objections by Forest Supervisor are published in:—''*East Valley Tribune*'' and ''*Scottsdale Tribune*'', Mesa, Arizona.

Cave Creek Ranger District Notices are published in:—''*Scottsdale Tribune*'', in Mesa, Arizona.

Globe Ranger District Notices are published in:—''*Arizona Silver Belt*'', Globe, Arizona.

Mesa Ranger District Notices are published in:—''*East Valley Tribune*'', Mesa, Arizona.

Payson Ranger District and Pleasant Valley Ranger District and Tonto Basin Ranger District Notice are published in:—''*Payson Roundup*'', Payson, Arizona.

New Mexico National Forests

Carson National Forest

Notices of Availability for Comments, Decisions and Objections by Forest Supervisor and Camino Real Ranger District and Tres Piedras Ranger District and Questa Ranger District are published in:—''*The Taos News*'', Taos, New Mexico. Canjilon Ranger District and El Rito Ranger District Notices are published in —''*Rio Grande Sun*'', Espanola, New Mexico.

Jicarilla Ranger District Notices are published in:—''*Farmington Daily Times*'', Farmington, New Mexico.

Cibola National Forest and National Grasslands

Notices for Availability for Comments, Decisions and Objections by Forest Supervisor affecting lands in New Mexico, except the National Grasslands are published in:—''*Albuquerque Journal*'', Albuquerque, New Mexico.

Forest Supervisor Notices affecting National Grasslands in New Mexico, Oklahoma and Texas are published by grassland and location as follows: Kiowa National Grassland in Colfax, Harding, Mora and Union Counties, New Mexico published in:—''*Union County Leader*'', Clayton, New Mexico. Rita Blanca National Grassland in Cimarron County, Oklahoma published in:—''*Boise City News*'', Boise City, Oklahoma. Rita Blanca National Grassland in Dallam County, Texas published in:—''*The Dalhart Texan*'', Dalhart, Texas. Black Kettle National Grassland, in Roger Mills County, Oklahoma published in:—''*Cheyenne Star*'', Cheyenne, Oklahoma.

Black Kettle National Grassland, in Hemphill County, Texas published in:—''*The Canadian Record*'', Canadian, Texas. McClellan Creek National Grassland published in:—''*The Pampa News*'', Pampa, Texas.

Mt. Taylor Ranger District Notices are published in:—''*Cibola County Beacon*'', Grants, New Mexico.

Magdalena Ranger District Notices are published in:—''*Defensor—Chieftain*'', Socorro, New Mexico.

Mountainair Ranger District Notices are published in:—''*Mountainview Telegraph*'', Tijeras, New Mexico.

Sandia Ranger District Notices are published in:—''*Albuquerque Journal*'', Albuquerque, New Mexico.

Kiowa National Grassland Notices are published in:—''*Union County Leader*'', Clayton, New Mexico.

Rita Blanca National Grassland Notices in Cimarron County, Oklahoma are published in:—''*Boise City News*'', Boise City, Oklahoma while Rita Blanca National Grassland Notices in Dallam County, Texas are published in:—''*Dalhart Texan*'', Dalhart, Texas.

Black Kettle National Grassland Notices in Roger Mills County, Oklahoma are published in:—''*Cheyenne Star*'', Cheyenne, Oklahoma, while Black Kettle National Grassland Notices in Hemphill County, Texas are published in:—''*The Canadian Record*'', Canadian, Texas.

McClellan Creek National Grassland Notices are published in:—''*The Pampa News*'', Pampa, Texas.

Gila National Forest

Notices for Availability for Comments, Decisions and Objections by Forest Supervisor and Quemado Ranger District and Reserve Ranger District and Glenwood Ranger District and Silver City Ranger District and Wilderness Ranger District are published in:—*''Silver City Daily Press*'', Silver City, New Mexico.

Black Range Ranger District Notices are published in:—*''The Herald'',* Truth or Consequences, New Mexico.

Lincoln National Forest

Notices for Availability for Comments, Decisions and Objections by Forest Supervisor and Sacramento Ranger District are published in:—*''Alamogordo Daily News'',* Alamogordo, New Mexico.

Guadalupe Ranger District Notices are published in:—*''Carlsbad Current Argus'',* Carlsbad, New Mexico.

Smokey Bear Ranger District Notices are published in:—*''Ruidoso News'',* Ruidoso, New Mexico.

Santa Fe National Forest

Notices for Availability for Comments, Decisions, and Objections by Forest Supervisor and Coyote Ranger District and Cuba Ranger District and Espanola Ranger District and Jemez Ranger District and Pecos-Las Vegas Ranger District are published in:—*''Albuquerque Journal'',* Albuquerque, New Mexico.

Dated: April 6, 2005.

Abel Camarena,

Deputy Regional Forester, Southwestern Region.

[FR Doc. 05–7887 Filed 4–19–05; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Deschutes and Ochoco National Forests Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Deschutes and Ochoco National Forests Resource Advisory Committee will meet in Redmond, Oregon. The purpose of the meeting is to receive natural resource projects that will be reviewed and recommended, discuss the Committee's project guidelines and decisionmaking priorities, review bylaws, elect a Chair and discuss reports related to the work of the Committee under Title II of the Secure Rural Schools and Community Self-Determination Act of 2000.

DATES: The meeting will be held May 10, 2005 from 1 p.m. to 4 p.m.

ADDRESSES: The meeting will be held at the Office of the Central Oregon Intergovernmental Council, 2363 SW., Glacier Place, Redmond, Oregon 97756. Send written comments to Dan Rife, acting as Designated Federal Official for Larry Timchak, for the Deschutes and Ochoco Resource Advisory Committee, c/o Forest Service, USDA, Ochoco National Forest, 3160 NE., 3rd St., Prineville, OR 97754 or electronically to *drife@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Dan Rife, Acting as Designated Federal Official for Larry Timchak, Ochoco National Forest, 541–383–5534.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Committee discussion is limited to Forest Service staff and Committee members. However, persons who wish to bring Title II matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting. A public

input session will be provided and individuals who made written requests by May 4 will have the opportunity to address the Committee at the session.

Dated: Aril 14, 2005.

Dan Rife,

Acting Designated Federal Official.

[FR Doc. 05–7885 Filed 4–19–05; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

West Tarkio Watershed, Page and Montgomery Counties, IA and Atchison County, MO

AGENCY: Natural Resources Conservation Service, Agriculture.

ACTION: Notice of intent to prepare an Environmental Impact Statement.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969; the Council on Environmental Quality Guidelines (40 CFR part 1500); and the Natural Resources Conservation Service Guidelines (7 CFR part 650); the Natural Resources Conservation Service, U.S. Department of Agriculture gives notice that an environmental impact statement (EIS) is being prepared for West Tarkio Watershed, Page and Montgomery Counties, Iowa and Atchison County, Missouri.

FOR FURTHER INFORMATION CONTACT: Richard Van Klaveren, State Conservationist, or David Beck, Planning Leader, 210 Walnut Street, 693 Federal Building, Des Moines, IA 50309–2180.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project may cause significant local, regional, or national impacts on the environment. As a result of these findings, Richard Van Klaveren, NRCS State Conservationist, has determined that the preparation and review of an environmental impact statement (EIS) is needed for this project.

This project involves the development of a plan to manage, protect, and enhance water and land resources in the West Tarkio Watershed. The watershed project area is 106,000 acres; 71,000 acres in Page and Montgomery Counties in southwest Iowa and 35,000 acres in Atchison County, Missouri. The upper end of the watershed is four miles northeast of Red Oak, Iowa. The City of Tarkio, Missouri, is at the downstream boundary of the project area.

The original sponsors include the three county governments, three county soil and water conservation districts, the city of Tarkio, Missouri, as well as the cities of Clarinda and Shenandoah, Iowa. The sponsors have formed the West Tarkio Watershed Steering Committee to serve as an advisory body for the project. The Steering Committee is made up of representatives from the sponsoring groups plus four local watershed residents.

The sponsors' original objectives are regional water supply including the Cities of Clarinda and Shenandoah, flood damage reduction for the City of Tarkio and agricultural land, water based recreation, grade stabilization of West Tarkio Creek and its tributaries, upland gully and erosion control, and water quality protection.

The NRCS planning assistance is being provided under the authority of the Watershed Protection and Flood Prevention Act, Public Law 83–566. The NRCS has completed studies to determine the extent of natural resource problems and needs in accordance with the sponsors' objectives.

Study results indicate that the sponsor objective of flood damage reduction for the City of Tarkio and agricultural land is not economically feasible. Land voiding and depreciation rates are not high enough to justify grade stabilization dams to control gullies and stream channel erosion. Other federal and state programs can be used to satisfy landowner requests for upland gully and erosion control.

The NRCS studies indicate that the sponsors' objectives of water supply, water based recreation, and water quality protection are likely to be economically feasible. Additional study for these project purposes will be completed.

The original sponsors reconsidered their interest in the project considering the change in project purposes. Remaining sponsors are the Cities of Clarinda and Shenandoah, Iowa, the Page County Soil and Water Conservation District, and the Atchison County Soil and Water Conservation District.

Four study sites on the main channel of West Tarkio Creek, all located in Page County Iowa, were initially identified for possible multiple-purpose reservoir sites. One study site was dropped from further consideration after it was determined not to meet the water supply objective and that it would have more effect on public roads than other alternatives.

Studies indicated each remaining study site could be developed as a multi-purpose water impoundment to provide water based recreation and water supply. Six preliminary alternatives for multiple-purpose reservoirs were developed, two alternatives at each study site. The permanent pool sizes of the six preliminary alternatives ranged from 1100 acres to 1800 acres.

Groundwater was investigated as a water supply source as a result of public comment. NRCS consulted with groundwater experts from the Iowa Geological Survey Bureau of the Iowa Department of Natural Resources and the U.S. Geological Survey Bureau. Generalized sources of groundwater were identified in the area. There was no sponsor support for an alternative plan featuring groundwater because it could not meet the water-based recreation project purpose. In addition, one sponsor had been previously advised that long term, they should seek a surface water supply source to replace their current well fields.

Preliminary alternatives that do not meet the sponsors' objectives will be removed from further study and consideration. Each alterative plan that is carried through detailed planning will be compared against a no action plan as a basis to determine effects. The sponsors will select an alternative plan based on the effects, economic evaluation, and the extent that it meets their objectives. The project will include one multi-purpose reservoir with the purposes of water supply and water-based recreation. Best management practices may be included in the planned project in order to further protect the new surface water supply.

Two open house informational meetings were held in Shenandoah, Iowa on August 19, 2003, to initiate the planning process and obtain public input. State and federal agencies, private organizations, and local individuals were invited to a scoping meeting on February 17, 2004. The public input received from these meetings and at meetings of the West Tarkio Steering Committee will be considered as a draft Environmental Impact Statement is developed. The periodic Steering Committee meetings as well as individual member sponsor meetings are open to the public and provide opportunity for citizen input.

Preliminary issues: Among the issues that the NRCS plans to consider in the scope of the EIS analysis are:

—Environmental, economic, and social impacts of the alternatives. Major categories are listed below.

Soil erosion	Prime farmland
Flooding	Agricultural/other rural land

Recreation	Threatened and endangered species
Water quantity/supply	Wetlands
Water quality	Wildlife habitat
Cultural resources	Air quality

—Costs and benefits of the alternatives.

The West Tarkio draft EIS will be developed and published in the **Federal Register** with a target date of October 20, 2005. A 45-day comment period will be available for the public to provide comments. A 30 day comment period will be available following publication of the final EIS. A meeting will be held in the Shenandoah area near the date of the draft EIS publication to inform the public about the draft watershed plan-EIS and to obtain comments.

The draft watershed plan-EIS will be prepared and circulated for review by agencies and the public. This review will be conducted concurrently with the publication of the draft EIS in the **Federal Register**. The Natural Resources Conservation Service invites participation and consultation of public agencies, any affected Indian tribe, and individuals that have special expertise, legal jurisdiction, or interest in providing data for consideration in preparing the draft EIS. Comments and other inputs received will be considered in plan development. Further information on the proposed action may be obtained from David Beck, Planning Leader, at the above address.

Dated: April 12, 2005.

Richard Van Klaveren,

State Conservationist.

[FR Doc. 05–7921 Filed 4–19–05; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of Proposed Changes to the Natural Resources Conservation Service's National Handbook of Conservation Practices

AGENCY: Natural Resources Conservation Service (NRCS), USDA.

ACTION: Notice of availability of proposed changes in the NRCS National Handbook of Conservation Practices for public review and comment.

SUMMARY: Notice is hereby given of the intention of NRCS to issue 11 new or revised conservation practice standards in its National Handbook of Conservation Practices. These standards include: Alley Cropping (Code 311), Prescribed Burning (Code 338), Multistory Cropping (Code 379), Windbreak-Shelterbelt Establishment (Code 380), Riparian Forest Buffer (Code 391), Tree-Shrub Site Preparation (Code 490), Tree-Shrub Establishment (Code 612), Windbreak-Shelterbelt Renovation (Code 650), Forest Trails and Landings (Code 655), Tree-Shrub Pruning (Code 660), and Forest Stand Improvement (Code 666). NRCS State Conservationists who choose to adopt these practices for use within their States will incorporate them into Section IV of their respective electronic Field Office Technical Guides. These practices may be used in conservation systems that treat highly erodible land or on land determined to be wetland.

DATES: *Effective Dates:* Comments will be received for a 30-day period commencing with this date of publication. This series of new or revised conservation practice standards will be adopted after the close of the 30-day period. Send comments electronically to *Daniel.Meyer@usda.gov,* or in writing to Daniel Meyer, National Agricultural Engineer, Natural Resources Conservation Service, Post Office Box 2890, Room 6139–S, Washington, DC 20013–2890.

FOR FURTHER INFORMATION CONTACT: Copies of these standards can be downloaded or printed from the following Web site: *ftp://ftp-fc.sc.egov.usda.gov/NHQ/practice-standards/federal-register/.* Single copies of these standards also are available from NRCS in Washington, DC. Submit individual inquiries to *Daniel.Meyer@usda.gov,* or in writing to Daniel Meyer, National Agricultural Engineer, Natural Resources Conservation Service, Post Office Box 2890, Room 6139–S, Washington, DC 20013–2890.

SUPPLEMENTARY INFORMATION: Section 343 of the Federal Agriculture Improvement and Reform Act of 1996 requires NRCS to make available, for public review and comment, proposed revisions to conservation practice standards used to carry out the highly erodible land and wetland provisions of the law. For the next 30 days, NRCS will receive comments relative to the proposed changes. Following that period, a determination will be made by NRCS regarding disposition of those comments, and a final determination of changes will be made.

Signed in Washington, DC, on April 7, 2005.

Bruce I. Knight,

Chief, Natural Resources Conservation Service.

[FR Doc. 05–7580 Filed 4–19–05; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Miscellaneous Activities

ACTION: Proposed collection: Comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before June 20, 2005.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6611, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via Internet at *dhynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Patrick Heinig, BIS ICB Liaison, (202) 482–4848, Department of Commerce, Room 6716, 14th and Constitution Avenue, NW., Washington, DC, 20230.

SUPPLEMENTARY INFORMATION:

I. Abstract

On September 30, 1993, the Secretary of Commerce submitted to the Congress a report of the Trade Promotion Coordinating Committee, entitled Toward a National Export Strategy. The report included the goal to ''Undertake a comprehensive review of the Export Administration Regulations to simplify, clarify, and make the regulations more user-friendly''. To carry out this recommendation, BIS has rewritten the entire EAR. To the extent activities have been added or changed but not deleted, this collection represents the authority to collect, on rare occasions, certain information from the public. This assembly of information collection activities is comprised of two activities. ''Registration Of U.S. Agricultural Commodities For Exemption From Short Supply Limitations On Export'', and ''Petitions For The Imposition Of Monitoring Or Controls On Recyclable Metallic materials; Public Hearings'' are statutory in nature and—though they never have been applied—must remain a part of BIS's information collection budget authorization. The third—The Commerce Control List—became

necessary as the rewrite of the Export Administration Regulations sought to harmonize the U.S. ECCN system with the European system for consistency and future simplicity.

However, this activity is no longer needed since the transformation from the old system to the new system is complete.

For the purpose of clarity, this abstract will refer to the two activities as follows:

USAG will refer to Registration Of U.S. Agricultural Commodities For Exemption From Short Supply Limitations On Export activities; and, *petitions* will refer to Petitions For The Imposition Of Monitoring Or Controls On Recyclable Metallic materials; Public Hearings activities.

II. Method of Collection

For USAG, the method is a written application for the exemption from Short Supply Limitations on Export Activities.

For *petitions*, the method is a written petition requesting the monitoring of exports or the imposition of export controls, or both, with respect to certain materials.

The same mailing address is used for both submissions: P.O. Box 273, Washington, DC 20230.

III. Data

OMB Number: 0694–0102.

Form Number: None.

Type of Review: Regular submission for extension of a currently approved collection.

Affected Public: Individuals, businesses or other for-profit and not-for-profit institutions.

Estimated Number of Respondents: 2.

Estimated Time Per Response: USAG: 5 hours per response; *Petition*: 5 hours per response.

Estimated Total Annual Burden Hours: 10.

Estimated Total Annual Cost: No capital expenditures are required.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: April 15, 2005.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 05–7911 Filed 4–19–05; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Requests for the Appointment of a Technical Advisory Committee

ACTION: Proposed collection: comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before June 20, 2005.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6611, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via Internet at *DHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Pat Heinig, BIS ICB Liaison, (202) 482–4848, Department of Commerce, Room 6716, 14th and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Technical Advisory Committees were established to advise and assist the U.S. Government on export control matters. In managing the operations of the TACs, the Department of Commerce is responsible for implementing the policies and procedures prescribed in the Federal Advisory Committee Act. The Bureau of Export Administration provides technical and administrative support for the Committees.

The TACs advise the government on proposed revisions to export control lists, licensing procedures, assessments of the foreign availability of controlled products, and export control regulations.

II. Method of Collection

Written Request to BIS.

III. Data

OMB Number: 0694–0100.

Form Number: None.

Type of Review: Regular submission for extension of a currently approved collection.

Affected Public: Individuals, businesses or other for-profit and not-for-profit institutions.

Estimated Number of Respondents: 1.

Estimated Time per Response: 5 hours per response.

Estimated Total Annual Burden Hours: 5.

Estimated Total Annual Cost: No capital expenditures are required.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: April 15, 2005.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 05–7915 Filed 4–19–05; 8:45 am]

BILLING CODE 3510–JT–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

National Security and Critical Technology Assessment of the U.S. Industrial Base

ACTION: Proposed collection: comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before June 20, 2005.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6611, 14th and Constitution Avenue, NW., Washington, DC 20230. (or via internet at *DHynek@doc.gov.*)

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Pat Heinig, BIS ICB Liaison, (202) 482–4848, Department of Commerce, Room 6716, 14th and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Department of Commerce/BIS, in coordination with other government agencies and private entities, conduct assessments of U.S. industries deemed critical to our national security. The information gathered is needed to assess the health and competitiveness as well as the needs of the targeted industry sector in order to maintain a strong U.S. industrial base.

II. Method of Collection

Written response.

III. Data

OMB Number: 0694–0119.
Form Number: None.
Type of Review: Regular submission for extension of a currently approved collection.
Affected Public: Individuals, businesses or other for-profit and not-for-profit institutions.
Estimated Number of Respondents: 6,000.
Estimated Time per Response: 4 hours per response.
Estimated Total Annual Burden Hours: 24,000.
Estimated Total Annual Cost: No capital expenditures are required.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: April 15, 2005.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 05–7917 Filed 4–19–05; 8:45 am]

BILLING CODE 3510–JT–P

DEPARTMENT OF COMMERCE

International Trade Administration

Mission/Exhibition Evaluation Form

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burdens, invites the general public and other Federal agencies to take this opportunity to comment on the continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before June 20, 2005.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6612, 14th & Constitution Avenue, NW., Washington, DC 20230 or via the Internet at *dHynek@doc.gov.*

FOR FURTHER INFORMATION CONTACT: Request for additional information or copies of the information collection instrument and instructions should be directed to: Joseph English, U.S. & Foreign Commercial Service, Global Trade Programs, Room 2810, 14th & Constitution Avenue, NW., Washington, DC 20230; Phone number: (202) 482–3334, and fax number: (202) 482–0115.

SUPPLEMENTARY INFORMATION:

I. Abstract

Department of Commerce (DOC) and DOC-certified trade missions and exhibitions are overseas events planned, organized and led by government and non-government export promotion agencies such as industry trade associations; agencies of Federal, State, and local governments; Congressional representatives; chambers of commerce; regional consortia; and other export-oriented groups. These events are evaluated at the close of the program by completion of the Mission/Exhibition Evaluation form. This submission renews OMB approval of the form.

This form is used to: (1) Evaluate the effectiveness of DOC or DOC-certified overseas trade events through the collection of information relating to required performance measures; (2) document the results of participation in DOC events; (3) evaluate results reported by small to mid-sized, new-to-export/new-to-market U.S. companies; (4) document the successful completion of trade promotion activities conducted by overseas DOC offices; (5) identify strengths and weaknesses of DOC trade promotion programs, in the interest of improving service to the U.S. business community.

II. Method of Collection

Form ITA–4075P is completed on-site at the end of an overseas mission or exhibition by participating U.S. firms, who return it to the Department of Commerce exhibition manager at the close of the event upon request.

III. Data

OMB Number: 0625–0034.
Form Number: ITA–4075P.
Type of Review: Regular Submission.
Affected Public: Companies participating in Commerce Department trade promotion events.
Estimated Number of Respondents: 2,000.
Estimated Time per Response: 5 minutes.
Estimated Total Annual Burden Hours: 167 hours.
Estimated Total Annual Costs: The estimated annual cost for this collection is $9,245.00 ($5,845.00 for respondents and $3,400.00 for Federal government employees).

IV. Request for Comments

Comments are invited on (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and costs) of the

proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: April 15, 2005.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 05–7916 Filed 4–19–05; 8:45 am]

BILLING CODE 3510–FP–P

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trading Companies Contact Facilitation Service

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on the continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(C)(2)(A)).

DATES: Written comments must be submitted on or before June 20, 2005.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6612, 14th & Constitution Avenue, NW., Washington, DC 20230 or via the Internet at *dHynek@doc.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to: Chris Rasmussen, Export Trading Company Affairs; Industry Analysis; Room 1104; 14th St. & Constitution Ave, NW., Washington, DC 20230; phone: (202) 482–5131; and fax: (202) 482–1790.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Contact Facilitation Service (CFS) is a U.S. Department of Commerce database, designed to put U.S. producers together with export service providers. Many U.S. firms have never exported because of a fear of the risks involved in exporting and a lack of knowledge of the international marketplace. New-to-export firms need the assistance of export service firms offering export trade services. One of the purposes of the Export Trading Company (ETC) Act of 1982 is to increase United States exports of goods and services by encouraging more efficient provision of export trade services to U.S. producers and suppliers. Section 104 of the Act directs Commerce to provide a service to facilitate contact between producers of exportable goods and services and firms offering export trade services.

The International Trade Administration (ITA) maintains the CFS database of U.S. manufacturers, export trading and management companies, wholesalers/distributors, and international service firms. The CFS is designed to help promote exports and enable U.S. producers to locate export service providers. Export Service firms registered in the CFS database are listed in annual print editions of the U.S. Trade Assistance Directory, distributed throughout the United States. U.S. producers of goods and services registered in the CFS database are listed in the annual print editions of the U.S. Department of Commerce Exporters' Yellow Pages™, distributed worldwide. These directories also are accessible online at *http://www.myexports.com.* The print and electronic produced and made available through ITA's ''MyExports'' ''program. Without the information collected by the form, the CFS database and the resulting directories would be unreliable and ineffective, because users of this kind of data need current information about the listed companies.

II. Method of Collection

Form ITA–4094P is sent by request to U.S. firms.

III. Data

OMB Number: 0625–0120.

Form Number: ITA–4094P.

Type of Review: Regular Submission.

Affected Public: Business or other for-profit; not-for-profit institutions and State, local or tribal government.

Estimated Number of Respondents: 12,000.

Estimated Time per Response: 15 minutes.

Estimated Total Annual Burden Hours: 3,000.

Estimated Total Annual Costs: $95,500 ($10,000 government and $85,500 respondents.)

IV. Request for Comments

Comments are invited on (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and costs) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: April 15, 2005.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 05–7918 Filed 4–19–05; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

Information Services Order Form

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burdens, invites the general public and other Federal agencies to take this opportunity to comment on the continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before June 20, 2005.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6612, 14th & Constitution Avenue, NW., Washington, DC 20230 or via the Internet at *dHynek@doc.gov.*

FOR FURTHER INFORMATION CONTACT: Request for additional information or copies of the information collection instrument and instructions should be directed to Joseph English, telephone 202–482–3334, fax 202–482–5362, e-mail *Joseph.English@mail.doc.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The U.S. & Foreign Commercial Service Export Assistance Centers offer their clients DOC programs, market research, and services to enable the client to begin exporting or to expand existing exporting efforts.

The Information Services Order Form is used by US&FCS trade specialists in the Export Assistance Centers to collect information about clients in order to determine which programs or services would best help clients meet their export goals. This form is required for clients to order US&FCS programs and services. Certain programs are tailored for individual clients, *e.g.*, the International Partner Search, which identifies potential overseas agents or distributors for a particular U.S. manufacturer.

II. Method of Data Collection

Trade specialists gather information from clients at the Export Assistance Centers.

III. Data

OMB Number: 0625–0143.

Form Number: ITA–4096P.

Type of Review: Regular submission.

Affected Public: Companies interested in ordering export promotion products or services.

Estimated Number of Respondents: 975.

Estimated Time Per Response: Range from 5 to 10 minutes.

Estimated Total Annual Burden Hours: 323 hours.

IV. Request for Comments

Comments are invited on whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including (a) whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and costs) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: April 15, 2005.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E5–1863 Filed 4–19–05; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Marine Protected Areas Federal Advisory Committee; Public Meeting

AGENCY: National Ocean Service, NOAA, Department of Commerce.

ACTION: Notice of open meeting.

SUMMARY: Notice is hereby given of the next meeting of the Marine Protected Areas Federal Advisory Committee (MPAFAC) in Portland, Maine.

DATES: The meeting will be held Tuesday, May 17, 2005 from 8:30 a.m. to 5 p.m., Wednesday, May 18, 2005 from 8 a.m. to 5 p.m., and Thursday, May 19, 2005 from 8 a.m. to 5 p.m. These times and the agenda topics described below may be subject to change. Refer to the Web page listed below for the most up-to-date meeting agenda.

ADDRESSES: The meeting will be held at the Doubletree Hotel, 1230 Congress Street, Portland, Maine 04192.

FOR FURTHER INFORMATION CONTACT: Lauren Wenzel, Designated Federal Officer, MPAFAC, National Marine Protected Areas Center, 1305 East-West Highway, Silver Spring, Maryland 20910. (Phone: 301–713–3100 x136, Fax: 301–713–3110); e-mail: *lauren.wenzel@noaa.gov*; or visit the National MPA Center Web site at *http://www.mpa.gov.*

SUPPLEMENTARY INFORMATION: The MPAFAC, composed of external, knowledgeable representatives of stakeholder groups, was established by the Department of Commerce to provide advice to the Secretaries of Commerce and the Interior on implementation of Section 4 of Executive Order 13158 on MPAs. The meeting will be open to public participation, with a one hour and fifteen minute time period set aside from 3:45 p.m. to 5 p.m. on Tuesday, May 17, 2005, and fifty minutes set aside from 8:10 a.m. to 9 a.m. on Thursday, May 19, 2005 for the Committee to receive verbal comments or questions from the public. In general, each individual or group making a verbal presentation will be limited to a total time of five (5) minutes. Copies of written statements should be submitted to the Designated Federal Official by Friday, May 13, 2005.

Matters To Be Considered: On Tuesday, May 17, the Committee will hear from a panel representing sportfishing perspectives on the national system of marine protected areas and representatives of two regional fishery management councils. On Tuesday afternoon and Wednesday the Committee will review and discuss the Committee's recommendations as summarized in a draft report to the Departments of Commerce and the Interior. On Thursday, May 19, the Committee will continue its consideration of recommendations and discuss the next charge to the Committee.

Dated: April 7, 2005.

Eldon Hout,

Director, Office of Ocean and Coastal Resource Management.

[FR Doc. 05–7942 Filed 4–19–05; 8:45 am]

BILLING CODE 3510–08–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Marine Protected Areas Center New England Region Public Dialogue Meeting

AGENCY: National Ocean Service, NOAA, Department of Commerce.

ACTION: Notice of public meeting.

SUMMARY: Notice is hereby given of a public meeting concerning the development of a national system of marine protected areas (MPAs) pursuant to Executive Order 13158 (May 26, 2000). The New England Region Public Dialogue will be held in Portland, Maine and is the second in a series of regional dialogues to be held around the United States to solicit input from the public concerning their views on a national system of MPAs. Additional meetings will be announced and scheduled pending available resources. Refer to the web page listed below for background information concerning the development of the national system of MPAs. Meeting room capacity is limited to 60 people, and as such interested participants are required to RSVP via the e-mail address (preferable), fax number, or phone number listed below, by no later than 5 p.m. e.d.t. on May 6, 2005. Attendance will be available to the first 60 people who respond.

Those who wish to attend but cannot due to space or schedule limitations can find background materials at the web page listed below and may submit

written statements to the e-mail, fax, or mailing address below. A written summary of the meeting will be posted on the Web site within one month of its occurrence.

DATES: The meeting will be held Monday, May 16, 2005 from 7 p.m. to 9:30 p.m. e.d.t.

ADDRESSES: The meeting will be held at the Gulf of Maine Research Institute, 350 Commercial Street, Portland, Maine 04101.

FOR FURTHER INFORMATION CONTACT: Jonathan Kelsey, National System Development Coordinator, National Marine Protected Areas Center, 1305 East-West Highway, Silver Spring, Maryland, 20910. (Phone: 301–713–3155 ext. 230, Fax: 301–713–3110); e-mail: *mpa.comments@noaa.gov;* or visit the National MPA Center Web site at *http://mpa.gov/national_system/.*

SUPPLEMENTARY INFORMATION: These forums are intended to solicit the public's views regarding the development of a national system of MPAs. All input received via these dialogues, e-mail, or fax will be for the public record and considered in developing a draft proposal for a national system of MPAs. At this preliminary stage in the effort to develop the national system, NOAA does not intend to respond to any comments received via these dialogues, e-mail, fax, or mail. Once a draft proposal is developed for the national system of MPAs, NOAA will publish it in the **Federal Register** for formal public comment and will subsequently provide a formal response to comments received.

Matters To Be Considered: Executive Order 13158 (May 26, 2000) calls for the development of a national system of MPAs. These forums are intended to solicit the public's views concerning the development of a national system of MPAs. Refer to the Web page listed above for background information concerning these dialogues and the development of the national system of MPAs.

Dated: April 13, 2005.

Eldon Hout,

Director, Office of Ocean and Coastal Resource Management.

[FR Doc. 05–7944 Filed 4–19–05; 8:45 am]

BILLING CODE 3510–08–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 041505A]

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

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

DATES: The GMT meeting will be held Monday, May 23, 2005 from 1 p.m. until business for the day is completed. The GMT meeting will reconvene Tuesday, May 24 through Friday, May 27, from 8:30 a.m. until business for the day is completed.

ADDRESSES: The GMT meeting will be held at the Pacific Fishery Management Council office, West Conference Room, 7700 NE Ambassador Place, Suite 200, Portland, Oregon 97220–1384. Telephone: 503–820–2280.

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

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

SUPPLEMENTARY INFORMATION: The purpose of the GMT meeting is to discuss groundfish management measures in place for the spring and summer months and consider inseason adjustments to ongoing West Coast groundfish fisheries, respond to assignments relating to implementation of the Council's groundfish strategic plan, discuss new groundfish stock assessments, discuss implementation strategies for Groundfish Fishery Management Plan Amendment 18, discuss alternatives for specifying and protecting West Coast groundfish essential fish habitat, discuss a range of alternatives for developing an individual quota (or dedicated access) program for the West Coast limited entry trawl fishery, discuss alternative revision rules for adopted groundfish rebuilding plans, and address other assignments relating to groundfish management. No management actions will be decided by the GMT. The GMT's role will be development of recommendations for consideration by the Council at its June meeting in Foster City, California.

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

Special Accommodations

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

Dated: April 15, 2005.

Emily Menashes,

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

[FR Doc. E5–1856 Filed 4–19–05; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 041505D]

Pacific Fishery Management Council; Public Meetings

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

ACTION: Notice of public meeting.

SUMMARY: The Groundfish Stock Assessment Review (STAR) Panel for Pacific ocean perch, darkblotched rockfish, and cabezon will hold a work session which is open to the public.

DATES: The Pacific ocean perch, darkblotched rockfish, and cabezon STAR Panel will meet beginning at 8 a.m., Monday, May 16, 2005. The meeting will continue through Friday, May 20, 2005 beginning at 8 a.m. every morning. The meetings will end at 5 p.m. each day, or as necessary to complete business.

ADDRESSES: See **SUPPLEMENTARY INFORMATION** for specific information regarding dates, times and locations for the meetings.

Council address: Pacific Fishery Management Council, 7700 NE

Ambassador Place, Suite 200, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Ms. Stacey Miller, NWFSC; telephone: 206–860–3480; or Mr. John DeVore, Pacific Fishery Management Council; telephone: 503–820–2280.

SUPPLEMENTARY INFORMATION:

Dates, Locations and Times of the Meetings

The Pacific ocean perch, darkblotched rockfish, and cabezon STAR Panel meeting will be held at National Marine Fisheries Service (NMFS), Northwest Fisheries Science Center (NWFSC), 2725 Montlake Boulevard East, Seattle, WA 98112; telephone: 206–860–3200, on Monday, May 16, 2005, Tuesday, May 17, 2005, Wednesday, May 18, 2005 and again on Friday, May 20, 2005.

On Thursday, May 19, 2005, the Pacific ocean perch, darkblotched rockfish, and cabezon STAR Panel meeting will be held at the University Inn, 4140 Roosevelt Way NE, Seattle, WA 98105; telephone: 206–632–5055.

The purpose of the STAR Panel meeting is to review draft stock assessment documents and any other pertinent information, work with the Stock Assessment Teams to make necessary revisions, and produce a STAR Panel report for use by the Council family and other interested persons. No management actions will be decided by the STAR Panel. The STAR Panel's role will be development of recommendations and reports for consideration by the Council's Scientific and Statistical Committee at its June meeting in Foster City, CA.

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

Special Accommodations

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

Entry to the NWFSC requires visitors to show a valid picture ID and register with security. A visitor's badge, which must be worn while at the NWFSC facility, will be issued to non-federal employees participating in the meeting.

Dated: April 15, 2005.

Emily Menashes,

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

[FR Doc. E5–1858 Filed 4–19–05; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 041505C]

Western Pacific Fishery Management Council; Public Meetings

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

ACTION: Notice of public meeting.

SUMMARY: The Western Pacific Fishery Management Council's (Council) Community Demonstration Project Program Advisory Panel (CDPP-AP) will meet on May 10 and 11, 2005, in Honolulu, HI. At the meeting, the Advisory Panel will select and rank proposals to be recommended for Council review. The Advisory Panel will develop criteria, objectives and priorities for recommendation to the Council for a subsequent solicitation for the Community Demonstration Project Program.

DATES: The meetings will be held on May 10 and 11, 2005. See **SUPPLEMENTARY INFORMATION** for specific dates, and times for the meetings.

ADDRESSES: The meeting will be held at the Council Office, 1164 Bishop Street, Honolulu, HI; telephone: 808–522–8220.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director; telephone: 808–522–8220.

SUPPLEMENTARY INFORMATION: On February 1, 2005 (70 FR 5166), proposals were solicited through the **Federal Register** for grants to support Community Demonstration Projects in the Western Pacific Area. The grants are authorized under section 111(b) of the Sustainable Fisheries Act of 1996, Public Law 104–297. Solicitation was closed on April 4, 2005, 5:00 P.M., Hawaii Time.

A meeting of the CDPP-AP is scheduled for May 10 and 11, 2005 to review proposals and discuss the program.

At the meeting, the Advisory Panel will review and rank proposals to be recommended for Council review. The Council or its designee will select proposals to be recommended for funding to the NMFS Grants Management Division. Successful applicants will be notified of their selection. Proposals not selected for will be returned to the applicants. Successful applicants will participate in a Grant Workshop in Honolulu to complete their grant application.

Dates and Locations

The CDPP-AP will meet from 8 a.m. on May 10 and 11, at the Western Pacific Fishery Regional Fishery Management Council office. The order in which agenda items are addressed may change. The CDPP-AP will meet as late as necessary to complete scheduled business.

The agenda for the Community Demonstration Project Program Advisory Panel will include the items listed below:

May 10, 2005

1. Introductions
2. Report on the program implementation and workshops
3. Review selection criteria
4. Review of qualified proposals

May 11, 2005

1. Review and Ranking of proposals for recommendation to the Council
2. Program review
   a. Development and review of objectives and priorities for the next solicitation
   b. Review program eligibility criteria
   c. Discussion and recommendations

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, 808–522–8220 (voice) or 808–522–8226 (fax), at least 5 days prior to the meeting date.

Dated: April 15, 2005.

Emily Menashes,

Acting Director, Office of Sustainable Fisheries, national marine Fisheries Service.

[FR Doc. E5–1857 Filed 4–19–05; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 021805B]

Endangered Species; Permits No. 1501 and 1506

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of permits.

SUMMARY: Notice is hereby given that two applicants have been issued a permit to take endangered and threatened sea turtles for purposes of scientific research.

ADDRESSES: The permits and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)427–2521; and

Assistant Regional Administrator for Protected Resources, Southeast Region, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701 (tel: 727/824–5312, fax 727/824–5517.

FOR FURTHER INFORMATION CONTACT: Ruth Johnson or Patrick Opay, (301)713–2289.

SUPPLEMENTARY INFORMATION: On October 8, 2004, notice was published in the **Federal Register** (69 FR 60363) that a request for a scientific research permit to take endangered and threatened sea turtles had been submitted by the above-named individuals. The requested permits have been issued under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

Dr. Allen Foley, Fish and Wildlife Research Institute, Florida Fish and Wildlife Conservation Commission, 6134 Authority Avenue, Building 200, Jacksonville, FL 32221: Permit No. 1501 authorizes Dr. Foley to take listed turtles in Florida Bay. Researchers may annually capture 175 loggerhead (*Caretta caretta*), 20 green (*Chelonia mydas*), 10 hawksbill (*Eretmochelys imbricata*) and 20 Kemp's ridley (*Lepidochelys kempii*) sea turtles by hand to continue long-term studies. Researchers may also annually capture an additional 50 adult loggerhead sea turtles by hand for studies of reproductive movements and behavior from southeast U.S. foraging grounds. Animals would be weighed, measured, examined, photographed, flipper and passive integrated transponder (PIT) tagged, paint marked on carapace, blood sampled, and released. The additional 50 loggerhead turtles would also be skin sampled, transported to a lab for ultrasound and laparoscopy, held 24 hours, testicular biopsy sampled, and released. A subset of 15 of the 50 loggerheads may be tagged with satellite, sonic, and time-depth recorder (TDR) transmitters.

Blair E. Witherington, Ph.D., (Principal Investigator), Florida Fish and Wildlife Conservation Commission, Fish and Wildlife Research Institute, Melbourne Beach Field Laboratory, 9700 South A1A, Melbourne Beach, FL 32951: Permit No. 1506 authorizes Dr. Witherington to annually capture 250 loggerhead, 10 green, 5 hawksbill, 2 Kemp's ridley, and 2 leatherback (*Dermochelys coriacea*) neonate and juvenile sea turtles in the Florida Atlantic Ocean and Gulf coasts to continue long-term studies. Turtles would be captured using a long handled dip net, handled, measured and released. A subset of loggerhead turtles would be transported to a lab and examined with a veterinary high resolution magnetic resonance interferometry (MRI) or computerized tomography (CT) exam, held for 3–4 days and released to determine their level of anthropogenic debris ingestion.

Issuance of this permit, as required by the ESA, was based on a finding that such permit (1) was applied for in good faith, (2) will not operate to the disadvantage of such endangered or threatened species, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: March 23, 2005.

Stephen L. Leathery,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 05–7817 Filed 4–19–05; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 041205D]

Endangered and Threatened Species; Recovery Plans; Notice of Availability of a Draft Interim Regional Recovery Plan

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

ACTION: Notice of Availability; request for comments.

SUMMARY: The National Marine Fisheries Service (NMFS) announces the availability for public review of the Draft Interim Regional Recovery Plan (Plan) for portions of three Evolutionarily Significant Units (ESUs) of salmon and steelhead Lower Columbia River Chinook Salmon (*Oncorhynchus tshawytscha*), Columbia River Chum Salmon (*Oncorhynchus keta*), and Lower Columbia River Steelhead (*Oncorhynchus mykiss*) within the Washington Lower Columbia Management Unit. NMFS is soliciting review and comment on the Plan from the public and all interested parties.

DATES: The comment period for the Draft Interim Regional Recovery Plan closes on June 20, 2005. NMFS will consider and address all substantive comments received during the comment period. Comments must be received no later than 5 p.m. Pacific Daylight Time on June 20, 2005. A description of previous public and scientific review, including scientific peer review, can be found in the NMFS Supplement to the Plan.

ADDRESSES: Please send written comments and materials to Patty Dornbusch, National Marine Fisheries Service, Salmon Recovery Division, 1201 N.E. Lloyd Boulevard, Suite 1100, Portland, OR 97232. Comments may be submitted by e-mail. The mailbox address for providing e-mail comments is *LCRsalmonWMU.nwr@noaa.gov*. Include in the subject line of the e-mail comment the following identifier: *Comments on LCR Salmon Plan*. Comments may also be submitted via facsimile (fax) to 503–872–2737. Persons wishing to review the Plan can obtain an electronic copy (i.e., CD-ROM) from Carol Joyce by calling 503–230–5408 or by e-mailing a request to *LCRsalmonWMU.nwr@noaa.gov*, with the subject line *CD-ROM Request for LCR Salmon Plan*. Electronic copies of the Plan are also available on-line on the NMFS Web site *www.nwr.noaa.gov/1srd/*.

FOR FURTHER INFORMATION CONTACT: Patty Dornbusch, (503–230–5430); or Elizabeth Gaar, (503–230–5434).

SUPPLEMENTARY INFORMATION:

Background

Recovery plans describe actions considered necessary for the conservation and recovery of species listed under the Endangered Species Act of 1973 (ESA), as amended (16 U.S.C. 1531 *et seq.*). The ESA requires that recovery plans incorporate (1) objective, measurable criteria which, when met, would result in a determination that the species is no longer threatened or endangered; (2) site-specific management actions necessary to achieve the plan's goals; and (3) estimates of the time required and costs to implement recovery actions. The ESA requires the development of recovery

plans for listed species unless such a plan would not promote the recovery of a particular species.

NMFS' goal is to restore endangered and threatened Pacific salmon and steelhead ESUs to the point where they are again secure, self-sustaining members of their ecosystems and no longer need the protections of the ESA. NMFS believes it is critically important to base its recovery plans on the many state, regional, tribal, local, and private conservation efforts already underway throughout the region. The agency's approach to recovery planning has been to support and participate in locally led collaborative efforts involving local communities, state, tribal, and Federal entities, and other stakeholders to develop recovery plans. On December 15, 2004, the State of Washington and the Lower Columbia Fish Recovery Board (LCFRB) presented the first of these locally developed recovery plans (Plan) to NMFS.

NMFS expects the Plan to help NMFS and other Federal agencies take a more consistent approach to future section 7 consultations. For example, the Plan will provide greater biological context for the effects that a proposed action may have on listed ESUs. This context will be enhanced by adding recovery plan science to the ''best available information'' for section 7 consultations. Such information includes viability criteria for ESUs and their independent populations; better understanding of and information on limiting factors and threats facing the ESUs; better information on priority areas for addressing specific limiting factors; and better geographic context for where the ESUs can tolerate different levels of risk.

After review of the Plan, NMFS has added a Supplement, which describes the Plan's relationship to ESA requirements for recovery plans, addresses additional elements needed to comply with those requirements, and describes the agency's intent to use the Plan as an interim regional recovery plan for the Washington Lower Columbia Management Unit and as a major component of the full ESU plan expected to be completed in 2006. The Plan, including the Supplement, is now available for public review and comment. NMFS will consider all substantive comments and information presented during the public comment period (see DATES).

ESUs Addressed and Planning Area (Washington Lower Columbia Management Unit)

The Plan covers a substantial portion of the range of three listed ESUs: Lower Columbia River chinook (*Oncorhynchus tshawytscha*), listed as threatened on March 24, 1999 (64 FR 14307); Columbia River chum (*Oncorhynchus keta*), listed as threatened on March 25, 1999 (64 FR 14507); and Lower Columbia River steelhead (*Oncorhynchus mykiss*), listed as threatened on March 19, 1998 (63 FR 13347). The Plan also addresses a substantial portion of the range of the Lower Columbia River Coho (*Oncorhynchus kisutch*) ESU. On June 14, 2004 (69 FR 33103), NMFS proposed Lower Columbia River coho salmon for listing as threatened. Because this ESU is not currently listed, NMFS is not proposing this Plan as an interim regional recovery plan for Lower Columbia River coho salmon at this time. (Also in June 2004, NMFS published a proposed hatchery listing policy (69 FR 31354) and a proposed rule to revise the listing status of 25 currently listed Pacific salmonid ESUs (69 FR 33102). Under the proposed rules, the listing status of the three currently listed ESUs addressed by this Plan would not change. Some adjustments would be made in the way hatchery fish are considered in the listing decision. The hatchery listing policy and listing determinations are expected to be finalized in June 2005.)

The area covered by the Plan includes the Washington portion of the Columbia River estuary and the Columbia River mainstem within the range of the ESUs as well as a number of tributary watersheds (including the Chinook, Grays, Skamokawa, Elochoman, Cowlitz, Coweeman, Kalama, Lewis, Washougal, Wind, and Little White Salmon Rivers, and Mill, Abernathy, Germany, Lake, Duncan, Hardy, and Hamilton Creeks). In all, the tributaries total more than 1,700 river miles in Washington. The planning area does not include portions of these ESUs on the Oregon side of the Columbia River or the White Salmon River basin in Washington.

NMFS proposes to delineate the portion of these ESUs that occurs within Washington State and within the planning area of the Lower Columbia Fish Recovery Board as the Washington Lower Columbia Management Unit. A management unit is a portion of a listed species (ESU) that might require different management due to different threats in certain geographic areas or management by different state, tribal, or local entities.

Although final recovery plans must cover the entire range of a species or ESU, NMFS has concluded that it would be disadvantageous to the three ESUs to wait to publish a draft plan until an ESU-wide plan was available. Additionally, NMFS intends to implement the Plan to the maximum extent practicable while working with constituents in Oregon to complete a recovery plan that will cover the entire range of the ESUs. Thus NMFS proposes to use the Plan as an interim regional recovery plan for the Washington Lower Columbia Management Unit of these ESUs. NMFS expects to publish a notice of availability in 2006 for a draft interim regional recovery plan for the Oregon Lower Columbia Management Unit and for the White Salmon River in Washington State. Following public review of the plans for these portions of the ESUs, NMFS will finalize a recovery plan covering the entire range of the ESUs.

The Plan

The Plan provides a roadmap for implementation of recovery actions in the Washington Lower Columbia Management Unit. It identifies threats to the ESUs, includes actions intended to address all the manageable threats, and includes recovery goals and measurable criteria consistent with the ESA. The Plan's initial approach is to target reductions in all manageable threats. As monitoring and evaluation improve our understanding of the effectiveness of various actions and their benefits throughout the life cycle of salmon and steelhead, adjustments may be made through the adaptive management framework described in the Plan. A combination of habitat loss and degradation, hydropower facility construction and operation, harvest, hatchery production of salmon and steelhead, and ecological changes have resulted in reduced viability of the Lower Columbia River chinook and chum salmon and steelhead ESUs and their eventual listing under the ESA. The Plan identifies the following key threats to the ESUs and recovery actions to reduce them:

1. *Habitat:* Stream conditions in the planning area have been degraded 20 to 80 percent relative to ''properly functioning'' benchmarks of suitability for salmon and steelhead. Recovery actions would protect pristine habitat and restore degraded habitat (with an emphasis on restoring access to high quality habitat), revise local land use practices, and change stream flow regimes to promote salmon and steelhead recovery. (Properly functioning condition benchmarks were defined based on the NMFS ''Matrix of Pathways and Indicators'' see NMFS, ''Making Endangered Species Act Determinations of Effect for Individual or Grouped Actions at the Watershed Scale,'' August 1996.)

2. *Hydropower:* Habitat conditions have been fundamentally altered by the construction and operation of a complex of tributary and mainstem dams and reservoirs for power generation, navigation, and flood control. Recovery actions would restore access to blocked habitats in the Cowlitz and Lewis River systems and address other effects of these hydropower systems and of the Federal Columbia River Power System on recovery of lower river ESUs.

3. *Harvest:* Current fishing impact rates on wild salmon populations within the Lower Columbia ESUs addressed by the plan range from 2.5 percent or less for chum salmon to 45 percent for fall chinook. Recovery actions would assure that fishery impacts to lower Columbia naturally spawning populations are managed to contribute to recovery and would also preserve fishing opportunities focused on hatchery fish and strong naturally spawning stocks.

4. *Hatcheries:* Risks to listed ESUs from hatchery production include genetic effects that reduce fitness and survival, ecological effects such as competition and predation, facility effects on passage and water quality, mixed stock fishery effects, and masking the true status of naturally produced fish. Recovery actions would expand the use of hatcheries for reintroduction and supplementation to help recover natural populations and would reconfigure production-based hatchery programs to minimize impacts on natural populations.

5. *Ecological Interactions:* Ecological interactions include interactions with non-native species, effects of salmon decline on system productivity, and native predators of salmon. Recovery actions would avoid introduction of new species and would reduce potential adverse effects of predation and existing non-native species.

The Plan identifies substantive actions needed to achieve recovery by addressing the threats to the species. The Plan also incorporates an adaptive management framework by which Plan actions and other elements will evolve and adapt to information gained as a result of monitoring and evaluation. The Plan also anticipates that future actions will be influenced by additional analysis of costs and effectiveness of recovery actions to maximize efficiency. The next step outlined in the Plan is to obtain implementation schedules from each of the responsible entities describing when and how recovery actions will occur and how much they will cost. This step will be coordinated by a committee established by the LCFRB and is described in the adaptive management section of the Plan. Implementation schedules are expected to be complete by the summer of 2005 and will be incorporated into the Plan.

Public Comments Solicited

NMFS solicits written comments on the draft Plan, including the Supplement. The Supplement states NMFS' assessment of the Plan's relationship to ESA requirements for recovery plans, specifies recovery (de-listing) criteria for the three ESUs, and explains the agency's intent to use the plan as an interim regional recovery plan and as the basis for a full ESU recovery plan. All substantive comments received by the date specified above will be considered prior to NMFS' decision whether to endorse the Plan as an interim regional recovery plan. Additionally, NMFS will provide a summary of the comments and responses through its regional web site and provide a news release for the public announcing the availability of the response to comments. NMFS seeks comments particularly in the following areas: (1) the analysis of limiting factors and threats; (2) the recovery scenario, including strategies and measures; (3) the criteria for removing the ESUs from the Federal list of endangered and threatened wildlife and plants; (4) meeting the ESA requirement for estimates of time and cost to implement recovery actions by soliciting implementation schedules (see discussion in the Supplement); and (5) the process of developing ESU-wide recovery plans using management unit plans.

Authority

The authority for this action is section 4(f) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*).

Dated: April 14, 2005.

Laurie K. Allen,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 05–7945 Filed 4–19–05; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

Patent and Trademark Office

[Docket No. 2005–C–061]

Public Advisory Committees

AGENCY: United States Patent and Trademark Office.

ACTION: Notice and request for nominations.

SUMMARY On November 29, 1999, the President signed into law the Patent and Trademark Office Efficiency Act (the ''Act''), Pub. L. 106–113, appendix I, title IV, subtitle G, 113 Stat. 1501A–572, which, among other things, established two Public Advisory Committees to review the policies, goals, performance, budget and user fees of the United States Patent and Trademark Office (USPTO) with respect to patents, in the case of the Patent Public Advisory Committee, and with respect to trademarks, in the case of the Trademark Public Advisory Committee, and to advise the Director on these matters. The USPTO is requesting nominations for three (3) members to each Public Advisory Committee for terms of three years that begin from date of appointment.

DATES: Nominations must be postmarked or electronically transmitted on or before May 27, 2005.

ADDRESSES: Persons wishing to submit nominations should send the nominee's resumé to Chief of Staff, Office of the Under Secretary of Commerce for Intellectual Property and Director of the USPTO, Post Office Box 1450, Alexandria, Virginia 22313–1450; by electronic mail to: *PPACnominations@uspto.gov* for the Patent Public Advisory Committee or *TPACnominations@uspto.gov* for the Trademark Patent Public Advisory Committee; by facsimile transmission marked to the Chief of Staff's attention at (571) 273–0464, or by mail marked to the Chief of Staff's attention and addressed to the Office of the Under Secretary of Commerce for Intellectual Property and Director of the USPTO, Post Office Box 1450, Alexandria, Virginia 22313–1450.

FOR FURTHER INFORMATION CONTACT: Chief of Staff by facsimile transmission marked to her attention at (571) 273–0464, or by mail marked to her attention and addressed to the Office of the Under Secretary of Commerce for Intellectual Property and Director of the USPTO, Post Office Box 1450, Alexandria, Virginia 22313–1450.

SUPPLEMENTARY INFORMATION: The Advisory Committees' duties include:

- Review and advise the Under Secretary of Commerce for Intellectual Property and Director of the USPTO on matters relating to policies, goals, performance, budget, and user fees of the USPTO relating to patents and trademarks, respectively; and
- Within 60 days after the end of each fiscal year: (1) Prepare an annual report on matters listed above; (2) transmit a report to the Secretary of Commerce, the President, and the Committees on the Judiciary of the Senate and the House of Representatives; and (3) publish the

report in the Official Gazette of the USPTO.

Members of the Patent and Trademark Public Advisory Committees are appointed by and serve at the pleasure of the Secretary of Commerce for three (3)-year terms.

Advisory Committees

The Public Advisory Committees are each composed of nine (9) voting members who are appointed by the Secretary of Commerce (the ''Secretary''). The Public Advisory Committee members must be United States citizens and represent the interests of diverse users of the USPTO, both large and small equity applicants in proportion to the number of such applications filed. The Committees must include members who have ''substantial backgrounds and achievement in finance, management, labor relations, science, technology, and office automation.'' 35 U.S.C. 5(b)(3). In the case of the Patent Public Advisory Committee, at least twenty-five 9(25) percent of the members must represent ''small business concerns, independent inventors, and nonprofit organizations,'' and at least one member must represent the independent inventor community. 35 U.S.C. 5(b)(2). Each of the Public Advisory Committees also includes three (3) non-voting members representing each labor organization recognized by the USPTO.

Procedures and Guidelines of the Patent and Trademark Public Advisory Committees

Each newly appointed member of the Patent and Trademark Public Advisory Committees will serve for a term of three years from date of appointment. Ad required by the Act, members of the Patent and Trademark Public Advisory Committees will receive compensation for each day while the member is attending meetings or engaged in the business of that Advisory Committee. The rate of compensation is the daily equivalent of the annual rate of basic pay in effect for Level III of the Executive Schedule under section 5314 of title 5, United States Code. While away from home or regular place of business, each member will be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code. The USPTO will provide the necessary administrative support, including technical assistance for the Committees.

Applicability of Certain Ethics Laws

Members of each Public Advisory Committee shall be special Government employees within the meaning of section 202 of title 18, United States Code. The following additional information includes several, but not all, of the ethics rules that apply to members, and assumes that members are not engaged in Public Advisory Committee business more than sixty days during each calendar year:

- Each member will be required to file a confidential financial disclosure form within thirty (30) days of appointment. 5 CFR 2634.202(c), 2634.204, 2634.902, and 2634.904(b).
- Each member will be subject to many of the public integrity laws, including criminal bars against representing a party, 18 U.S.C. 205(c), in a particular matter that came before the member's committee and that involved at least one specific party. *See also* 18 U.S.C. 207 for post-membership bars. A member also must not act on a matter in which the member (or any of certain closely related entities) has a financial interest. 18 U.S.C. 208.
- Representation of foreign interests may also raise issues. 35 U.S.C. 5(a)(1) and 18 U.S.C. 219.

Meetings of the Patent and Trademark Public Advisory Committees

Meetings of each Advisory Committee will take place at the call of the Chair to consider an agenda set by the Chair. Meetings may be conducted in person, electronically through the Internet, or by other appropriate means. The meetings of each Advisory Committee will be open to the public except each Advisory Committee may, by majority vote, meet in executive session when considering personnel by other confidential matters. Nominees must also have the ability to participate in Committee business through the Internet.

Procedure for Submitting Nominations

Submit resumé for nomination for the Patent Public Advisory Committee and the Trademark Public Advisory Committee to: Chief of Staff to the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office, utilizing the addresses provided above.

Dated: April 14, 2005.

Jon W. Dudas,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 05–7909 Filed 4–19–05; 8:45 am]

BILLING CODE 3510–16–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AND DATE: 11 a.m., Friday, May 6, 2005.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

FOR FURTHER INFORMATION CONTACT: Jean A. Webb, (202) 418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 05–8040 Filed 4–18–05; 2:19 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AND DATE: 11 a.m., Friday, May 13, 2005.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance matters.

FOR FURTHER INFORMATION CONTACT: Jean A. Webb, (202) 418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 05–8041 Filed 4–18–05; 2:19 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AND DATE: 11 a.m., Friday, May 20, 2005.

PLACE: 1155 21st St., NW., Washington, DC., 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

FOR FURTHER INFORMATION CONTACT: Jean A. Webb, (202) 418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 05–8042 Filed 4–18–05; 2:19 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AND DATE: 11 a.m., Friday, May 27, 2005.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

FOR FURTHER INFORMATION CONTACT: Jean A. Webb, (202) 418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 05–8043 Filed 4–18–05; 2:19 pm]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Notice of Availability of the Environmental Assessment for the Updated Pentagon Reservation Master Plan

AGENCY: Defense Facilities Directorate, Washington Headquarters Services, DoD.

ACTION: Notice; Availability of the Environmental Assessment for the Updated Pentagon Reservation Master Plan.

SUMMARY: The Department of Defense (DoD), Washington Headquarters Services (WHS) announces that an Environmental Assessment (EA) for the Updated Pentagon Reservation Master Plan is available for public review and comment on or before 14 April 2005. The Master Plan involves the entire Pentagon Reservation to include all the main buildings and sub-buildings within the Pentagon site in Arlington, Virginia, exclusive of the Navy Annex. A separate EA will be distributed for the Navy Annex, also known as the Naval Annex, Arlington Annex and Federal Office Building No. 2 (FOB2).

The EA documents an evaluation of the environmental effects of the proposed updated Master Plan in accordance with the National Environmental Policy Act of 1969, as amended (NEPA, 42 U.S. Code 4321 to 4370b); Council of Environmental Quality (CEQ) implementing regulations (Title 40, Code of Federal Regulations, Parts 1500–1508); and DoD Instruction 4715.9, Environmental Planning and Analysis. The EA addresses the potential impacts and mitigation measures associated with the proposed action. Environmental consequences examined include potential impacts on socio-economic conditions, cultural and visual resources, transportation systems, physical and biological resources, utilities and infrastructure, and cumulative impacts.

The Pentagon Reservation Master Plan constitutes a policy framework for the long-term development of the Master Plan area—an area of approximately 220 acres within the larger Pentagon Reservation. The Master Plan primarily focuses on the following improvements within the Master Plan area: Implementing new security measures; improving vehicular circulation; consolidating existing surface parking into parking structures; and increasing landscaped areas.

The EA is available on the Internet at *http://www.dtic.mil/ref/Safety/index.htm* and in paper copy at the Arlington County Central Library, 1015 N. Quincy Street, Arlington, VA 22201. For those with access or escort, copies are also available in the Pentagon Library Reference Center on the Pentagon Concourse.

DATES: Public comments are invited and must be either e-mailed or postmarked on or before 11 May 2005.

ADDRESSES: To request a copy of the EA via e-mail or provide comments, contact Phyllis Kaplan at telephone: 703–614–4879, e-mail: *Phyllis.Kaplan@whs.mil,* or WHS Defense Facilities Directorate, ETSD/FEB, 1155 Defense Pentagon, Room 4A935, Washington, DC 20301–1155. Individuals also may download the EA from the website noted above.

FOR FURTHER INFORMATION CONTACT: For additional information on the EA, contact Phyllis Kaplan at telephone: 703–614–4879 or e-mail: *Phyllis.Kaplan@whs.mil.*

Dated: April 15, 2005.

Jeannette Owings-Ballard,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 05–7934 Filed 4–19–05; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

Office of Safe and Drug-Free Schools, Overview Information, The Challenge Newsletter Grant Competition; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2005

Catalog of Federal Domestic Assistance (CFDA) Number: 84.184P.

Dates: Applications Available: April 20, 2005.

Deadline for Transmittal of Applications: May 20, 2005.

Deadline for Intergovernmental Review: July 19, 2005.

Eligible Applicants: Public and private entities and individuals.

Estimated Available Funds: $300,000.

Estimated Size of Award: $300,000.

Number of Awards: 1.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The Challenge Newsletter grant competition funds one cooperative agreement for the development and dissemination of The Challenge newsletter to provide information about effective strategies to prevent drug use and violent behavior among youth.

Priority: We are establishing this priority for this competition only, in accordance with section 437(d)(1) of the General Education Provisions Act (GEPA) (20 U.S.C. 1232(d)(1)).

Absolute Priority: For FY 2005, this priority is an absolute priority. Under 34 CFR 75.105(c)(3) we consider only applications that meet this priority.

This priority is:

(1) Design, write, publish, and disseminate The Challenge, a newsletter for educators, prevention specialists, and other professionals in fields related to drug abuse and violence prevention and education. The Challenge newsletter communicates information on current and future program directions, research-based activities, and other information related to effective strategies to prevent drug use and violent behavior among youth.

(2) Create or maintain and expand a subscriber database for the U.S. Department of Education (ED).

(3) Post each issue of The Challenge newsletter to a Web site for public access.

Waiver of Proposed Rulemaking: Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on a proposed priority. Section 437(d)(1) of GEPA, however, allows the Secretary to exempt from rulemaking requirements regulations governing the first grant competition under a new or substantially revised program authority. This is the first The Challenge Newsletter grant competition under the No Child Left Behind Act of 2001 and therefore qualifies for this exemption. In order to ensure timely grant awards, the Secretary has decided to forgo public comment on the priority under section 437(d)(1). This priority

will apply to this grant competition only.

Program Authority: 20 U.S.C. 7131.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 85, 86, 97, 98, 99, and 299.

II. Award Information

Type of Award: Cooperative agreement.

Estimated Available Funds: $300,000.

Estimated Size of Award: $300,000.

Number of Awards: 1.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* Public and private entities and individuals.

2. *Cost Sharing or Matching:* This program does not involve cost sharing or matching.

IV. Application Submission Information

1. *Address to Request Application Package:* Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll-free): 1–877–433–7827. Fax: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734.

You may also contact ED Pubs at its Web site: *http://www.ed.gov/pubs/edpubs.html* or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA Number 84.184P.

You also may access the electronic version of the application at either of the following Web sites: *http://www.ed.gov/programs/thechallenge/index.html* or *http://e-grants.ed.gov.*

Individuals with disabilities may obtain a copy of the application package in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) by contacting the program contact person listed in section VII. Agency Contact elsewhere in this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this program.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You should limit Part III to the equivalent of no more than 25 double-spaced typewritten pages on 8.5″ x 11″ paper, using a standard font no smaller than 12-point type with 1-inch margins on all sides.

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification, Part IV, the assurances and certifications; or the one-page abstract, resumes, or bibliography. However, you must include all of the application narrative in Section III.

3. *Submission Dates and Times:*

Applications Available: April 20, 2005.

Deadline for Transmittal of Applications: May 20, 2005.

Applications for grants under this competition may be submitted electronically using the Electronic Grant Application System (e-Application) accessible through the Department's e-Grants system, or in paper format by mail or hand delivery. For information (including dates and times) about how to submit your application electronically, or by mail or hand delivery, please refer to section IV. 6. *Other Submission Requirements* in this notice.

We do not consider an application that does not comply with the deadline requirements.

Deadline for Intergovernmental Review: July 19, 2005.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR Part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this program.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Applications for grants under this competition may be submitted electronically or in paper format by mail or hand delivery.

a. *Electronic Submission of Applications.*

If you choose to submit your application to us electronically, you must use e-Application available through the Department's e-Grants system, accessible through the e-Grants portal page at: *http://e-grants.ed.gov.*

While completing your electronic application, you will be entering data online that will be saved into a database. You may not e-mail an electronic copy of a grant application to us.

Please note the following:

- Your participation in e-Application is voluntary.
- You must complete the electronic submission of your grant application by 4:30 p.m. (Washington, DC time) on the application deadline date. The e-Application system will not accept an application for this competition after 4:30 p.m. (Washington, DC time) on the application deadline date. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the application process.
- The regular hours of operation of the e-Grants Web site are 6 a.m. Monday until 7 p.m. Wednesday; and 6 a.m. Thursday until midnight Saturday (Washington, DC time). Please note that the system is unavailable on Sundays, and between 7 p.m. on Wednesdays and 6:00 a.m. on Thursdays (Washington, DC time), for maintenance. Any modifications to these hours are posted on the e-Grants Web site.
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you submit your application in paper format.
- You must submit all documents electronically, including the Application for Federal Education Assistance (ED 424), Budget Information-Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- Any narrative sections of your application should be attached as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format.
- Your electronic application must comply with any page limit requirements described in this notice.
- Prior to submitting your electronic application, you may wish to print a copy of it for your records.
- After you electronically submit your application, you will receive an automatic acknowledgement that will include a PR/Award Number (an identifying number unique to your application).
- Within three working days after submitting your electronic application, fax a signed copy of the ED 424 to the Application Control Center after following these steps:

1. Print ED 424 from e-Application.
2. The applicant's Authorizing Representative must sign this form.
3. Place the PR/Award number in the upper right hand corner of the hard-copy signature page of the ED 424.
4. Fax the signed ED 424 to the Application Control Center at (202) 245–6272.

- We may request that you provide us original signatures on other forms at a later date.

Application Deadline Date Extension in Case of e-Application System Unavailability: If you are prevented from electronically submitting your application on the application deadline date because the e-Application system is unavailable, we will grant you an extension of one business day in order to transmit your application electronically, by mail, or by hand delivery. We will grant this extension if:

(1) You are a registered user of e-Application, and you have initiated an electronic application for this competition; and

(2) (a) The e-Application system is unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m. (Washington, DC time), on the application deadline date; or

(b) The e-Application system is unavailable for any period of time between 3:30 p.m. and 4:30 p.m. (Washington, DC time) on the application deadline date.

We must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension or to confirm our acknowledgement of any system unavailability, you may contact either (1) the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** (*see* VII. Agency Contact) or (2) the e-Grants help desk at 1–888–336–8930. If the system is down and therefore the application deadline is extended, an e-mail message will be sent to all registered users who have initiated an e-Application.

Extensions referred to in this section apply only to the unavailability of the Department's e-Application system. If the e-Application system is available, and, for any reason, you are unable to submit your application electronically or you do not receive an automatic acknowledgement of your submission, you may submit your application in paper format by mail or hand delivery in accordance with the instructions in this section.

b. *Submission of Paper Applications by Mail.*

If you submit your application in paper format by mail (through the U.S. Postal Service or a commercial carrier), you must mail the original and two copies of your application, on or before the application deadline date, to the Department at the applicable following address:

By mail through the U.S. Postal Service: U.S. Department of Education, Application Control Center, Attention: CFDA Number 84.184P, 400 Maryland Avenue, SW., Washington, DC 20202–4260; or

By mail through a commercial carrier: U.S. Department of Education, Application Control Center—Stop 4260, Attention: CFDA Number 84.184P, 7100 Old Landover Road, Landover, MD 20785–1506.

Regardless of which address you use, you must show proof of mailing consisting of one of the following:

1. A legibly dated U.S. Postal Service postmark;
2. A legible mail receipt with the date of mailing stamped by the U.S. Postal Service;
3. A dated shipping label, invoice, or receipt from a commercial carrier; or
4. Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

1. A private metered postmark, or
2. A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you submit your application in paper format, you (or a courier service) must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: CFDA Number 84.184P, 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30 p.m. (Washington, DC time) except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department:

1. You must indicate on the envelope and, if not provided by the Department, in Item 4 of ED Form 424, the CFDA number, and suffix letter, if any, of the competition under which you are submitting your application.
2. The Application Control Center will mail a grant application receipt acknowledgement to you. If you do not receive the grant application receipt acknowledgment within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

Selection Criteria: The selection criteria for this competition are from § 75.210 of EDGAR and are listed in the application package.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may also notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as specified by the Secretary in 34 CFR 75.118. We also may require more frequent performance reports.

4. *Performance Measure:* We have identified the following key GPRA performance measure for assessing the effectiveness of this program: The Challenge Newsletter will receive an overall rating of satisfactory or better from at least 80 percent of subscribers surveyed by the grantee in any given year of the grant.

VII. Agency Contacts

FOR FURTHER INFORMATION CONTACT: Richard Lucey, Jr., U.S. Department of Education, 400 Maryland Avenue, SW., room 3E335, Washington, DC 20202–6450. Telephone: (202) 205–5471. E-mail address: *richard.lucey@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative

format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed in this section.

VIII. Other Information

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

You may also view this document in text or PDF at the following site: *http://www.ed.gov/programs/thechallenge/applicant.html.*

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: April 18, 2005.

Deborah A. Price,

Assistant Deputy Secretary for Safe and Drug-Free Schools.

[FR Doc. 05–8012 Filed 4–19–05; 8:45 am]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2005–0086; FRL–7707–6]

FIFRA Section 24(c) Special Local Need Registrations; Renewal of Pesticide Information Collection Activities and Request for Comments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*) this notice announces that EPA is seeking public comment on the following Information Collection Request (ICR): Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Section 24(c) Special Local Need Registrations (EPA ICR No. 0595.09, OMB Control No. 2070–0055). This is a request to renew an existing ICR that is currently approved and due to expire January 31, 2006. The ICR describes the nature of the information collection activity and its expected burden and costs. Before submitting this ICR to the Office of Management and Budget (OMB) for review and approval under the PRA, EPA is soliciting comments on specific aspects of the collection.

DATES: Written comments, identified by the docket identification (ID) number OPP–2005–0086, must be received on or before June 20, 2005.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit III. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Cameo G. Smoot, Field and External Affairs Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–5454; fax number: (703) 305–5884; e-mail address: *smoot.cameo@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Does this Action Apply to Me?

You may be potentially affected by this action if you are a state and territorial government involved in issuing pesticide registrations. Potentially affected entities may include, but are not limited to:

- State and territorial government involved in issuing pesticide registrations (NAICS 92411), e.g., administration of air and water resources and solid waste management programs.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed above could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions in section 24(c) of FIFRA. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

II. How Can I Get Copies of this Document and Other Related Information?

A. Docket

EPA has established an official public docket for this action under docket ID number OPP–2005–0086. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

B. Electronic Access

You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit II.A. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

III. How Can I Respond to this Action?

A. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit III.B. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically*. If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPP–2005–0086. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail*. Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID Number OPP–2005–0086. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM*. You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit III.A. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail*. Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2005–0086.

3. *By hand delivery or courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA, Attention: Docket ID Number OPP–2005–0086. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit II.A.

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. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

C. What Should I Consider when I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the collection activity.

7. Make sure to submit your comments by the deadline in this notice.

8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

D. What Information is EPA Particularly Interested in?

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

1. Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility.
2. Evaluate the accuracy of the Agency's estimates of the burdens of the proposed collections of information.
3. Enhance the quality, utility, and clarity of the information to be collected.
4. Minimize the burden of the collections of information on those who are to respond, including through the use of appropriate automated or electronic collection technologies or other forms of information technology, e.g., permitting electronic submission of responses.

IV. What Information Collection Activity or ICR Does this Action Apply to?

EPA is seeking comments on the following ICR:

Title: FIFRA Section 24(c) Special Local Need Registrations.

ICR numbers: EPA ICR No. 0595.09, OMB Control No. 2070–0055.

ICR status: This is a renewal of an existing ICR that is currently approved by OMB and due to expire January 31, 2006.

Abstract: This data collection program is designed to provide EPA with the necessary data to review approval of a state issued pesticide registration. FIFRA section 24(c) authorizes the states to register additional uses of federally registered pesticides for distribution and use within the state to meet a special local need (SLN). A state-issued registration under FIFRA section 24(c) is deemed a federal registration for the purposes of the pesticide's use within the state's boundaries. A state must notify EPA, in writing, of any action it takes, i.e., issues, amends, or revokes a state registration. The Agency has 90 days to disapprove the registration. In such cases, the state is responsible for notifying the affected registrant.

V. What are EPA's Burden and Cost Estimates for this ICR?

Under the PRA, ''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. For this collection it 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.

The ICR provides a detailed explanation of this estimate, which is only briefly summarized in this notice. The annual public burden for this ICR is estimated to be 23,400. The following is a summary of the estimates taken from the ICR:

Respondents/affected entities: States and territorial governments.

Estimated total number of potential respondents: 60.

Frequency of response: Annual.

Estimated total/average number of responses for each respondent: 8–9.

Estimated total annual burden hours: 23,400.

Estimated total annual burden costs: $2,126,520.

VI. Are There Changes in the Estimates from the Last Approval?

The Agency has revised the estimated applicant burden upwards to reflect the average number of petitions that have been received in the last three years, which is 450 annually. In the last renewal for this ICR the annual petition rate was only 350 per year. This trend, coupled with updated 2004 labor figures accounts for the slightly higher burden and cost figures for this ICR renewal. No other program changes have occurred. This proposal represents a burden increase of 5,200 burden hours and $541,370 in increased burden hour costs over the last ICR renewal.

VII. What is the Next Step in the Process for this ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

List of Subjects

Environmental protection, Reporting and recordkeeping requirements.

Dated: April 7, 2005.

Susan B. Hazen,

Acting Assistant Administrator, Office of Prevention, Pesticides and Toxic Substances.

[FR Doc. 05–7587 Filed 4–19–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2005–0087; FRL–7706–3]

Foreign Purchaser Acknowledgment Statement of Unregistered Pesticides; Renewal of Pesticide Information Collection Activities and Request for Comments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*) this notice announces that EPA is seeking public comment on the following Information Collection Request (ICR): Foreign Purchaser Acknowledgment Statement of Unregistered Pesticides (EPA ICR No. 0161.10, OMB Control No. 2070–0027). This is a request to renew an existing ICR that is currently approved and due to expire on January 31, 2006. The ICR describes the nature of the information collection activity and its expected burden and costs. Before submitting this ICR to the Office of Management and Budget (OMB) for review and approval under the PRA, EPA is soliciting comments on specific aspects of the collection.

DATES: Written comments, identified by the docket identification (ID) number OPP–2005–0087, must be received on or before June 20, 2005.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit III. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Nathanael R. Martin, Field and External Affairs Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–6475; fax number: (703) 305–5884; e-

mail address: *martin.nathanael@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Does this Action Apply to Me?

You may be potentially affected by this action if you are a business engaged in the manufacturing of pesticides and other agricultural chemicals. Potentially affected entities may include, but are not limited to:

- Manufacturers of pesticides and other agricultural chemicals (NAICS 325320), e.g., exporters of unregistered pesticide products.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed above could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions in 40 CFR 168.75. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

II. How Can I Get Copies of this Document and Other Related Information?

A. Docket

EPA has established an official public docket for this action under docket ID number OPP–2005–0087. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

B. Electronic Access

You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit II.A. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

III. How Can I Respond to this Action?

A. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit III.B. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically*. If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPP–2005–0087. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or

other contact information unless you provide it in the body of your comment.

ii. *E-mail*. Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID Number OPP–2005–0087. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM*. You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit III.A. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail*. Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2005–0087.

3. *By hand delivery or courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA, Attention: Docket ID Number OPP–2005–0087. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit II.A.

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. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

C. What Should I Consider when I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the collection activity.
7. Make sure to submit your comments by the deadline in this notice.
8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

D. What Information is EPA Particularly Interested in?

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

1. Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility.
2. Evaluate the accuracy of the Agency's estimates of the burdens of the proposed collections of information.
3. Enhance the quality, utility, and clarity of the information to be collected.
4. Minimize the burden of the collections of information on those who are to respond, including through the use of appropriate automated or electronic collection technologies or other forms of information technology, e.g., permitting electronic submission of responses.

IV. What Information Collection Activity or ICR Does this Action Apply to?

EPA is seeking comments on the following ICR:

Title: Foreign Purchaser Acknowledgment Statement of Unregistered Pesticides.

ICR numbers: EPA ICR No. 0161.10, OMB Control No. 2070–0027.

ICR status: This ICR is a renewal of an existing ICR that is currently approved by OMB and is due to expire January 31, 2006.

Abstract: This information collection program is designed to enable EPA to provide notice to foreign purchasers of unregistered pesticides exported from the United States that the pesticide product cannot be sold in the United States. Section 17(a)(2) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) requires an exporter of any pesticide not registered under FIFRA section 3 or sold under FIFRA section 6(a)(1) to obtain a signed statement from the foreign purchaser acknowledging that the purchaser is aware that the pesticide is not registered for use in, and cannot be sold in, the United States. A copy of this statement must be transmitted to an appropriate official of the government in the importing country. The purpose of the purchaser acknowledgment statement requirement is to notify the government of the importing country that a pesticide judged hazardous to human health or the environment, or for which no such hazard assessment has been made, will be imported into that country. This information is submitted in the form of annual or per-shipment statements to EPA, which maintains original records and transmits copies thereof to appropriate government officials of the countries which are importing the pesticide.

V. What are EPA's Burden and Cost Estimates for this ICR?

Under the PRA, ''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. For this collection it 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.

The ICR provides a detailed explanation of this estimate, which is only briefly summarized in this notice. The annual public burden for this ICR is estimated to be 24,753 hours. The following is a summary of the estimates taken from the ICR:

Respondents/affected entities: All exporters of unregistered pesticides.

Estimated total number of potential respondents: 2,500.

Frequency of response: Annual or per-shipment.

Estimated total/average number of responses for each respondent: 1–2.

Estimated total annual burden hours: 24,753.

Estimated total annual burden costs: $2,134,400.

VI. Are There Changes in the Estimates from the Last Approval?

The total annual respondent burden cost for this ICR is estimated to be $2,134,400, an increase of $232,000 over the present ICR. This slight increase in respondent burden cost is due to adjustments in labor rates.

VII. What is the Next Step in the Process for this ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

List of Subjects

Environmental protection, Reporting and recordkeeping requirements.

Dated: April 7, 2005.

Susan B. Hazen,

Acting Assistant Administrator, Office of Prevention, Pesticides and Toxic Substances.

[FR Doc. 05–7588 Filed 4–19–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7901–3]

Notice of Request for Proposals for Projects To Be Funded from the Water Quality Cooperative Agreement Allocation (CFDA 66.463—Water Quality Cooperative Agreements); Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; correction.

SUMMARY: EPA Region 6 published in the **Federal Register** of March 30, 2005, a notice soliciting proposals funded from the Regional Water Quality Cooperative Agreement allocation. This document is being issued to add and clarify several requirements that must be included in competitive funding announcements according to EPA Order 5700.7, Environmental Results under EPA Assistance Agreements. Additionally, a clarification on how past performance will be evaluated is included. Due to this correction notice, the deadline for submittal of all proposals is May 31, 2005.

FOR FURTHER INFORMATION CONTACT: Terry Mendiola by telephone at 214–665–7144 or by e-mail at *mendiola.teresita@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA Region 6 published a notice in the **Federal Register** of March 30, 2005, (FR 05–6300) soliciting proposals for projects to be funded from the Regional Water Quality Cooperative Agreement Allocation. According to EPA Order 5700.7, all competitive funding announcements must include (1) a concise discussion of any expected outputs and outcomes in Section I and (2) ranking criteria for evaluating the applicant's plan for tracking and measuring its progress toward achieving the expected outputs and outcomes.

This correction adds a discussion of the difference between an output and outcome which will be added to Section I and reference to the outputs/outcomes for each priority area is added.

The language in the fourth ranking criteria of Section V regarding the quality of the evaluation component to assess or measure the environmental outcome(s) is corrected to reflect Order 5700.7 more accurately. A discussion for inclusion of this plan will be added in the Environmental Results and Outcomes Section of the proposal format.

This correction also clarifies the criteria for applicant's past performance. Applicant's past performance will be evaluated. Therefore, the words ''if applicable'' in the Past Performance criteria in Section V.1. will be deleted. Applicants will have to include any information on performance of past EPA projects similar in scope and relevance to the proposed project under the *Describe Applicant's Capability to Perform Work:* section of the proposal format. Applicants that do not have any relevant past performance will receive a neutral score for this factor. That means applicants will receive a possible 2.5 points out of 5. EPA Region 6 will also evaluate this criteria based on any existing information that is available based on past experience with the applicant.

Due to this correction notice, the date that the proposals must be submitted to EPA Region 6 has been extended. This extension also extends the date that EPA will identify initial selections.

Corrections

In notice FR 03–6300 published on March 30, 2005, (FR 05–6300) make the following corrections.

On page 16267, third column, under **DATES** caption, first sentence, correct the May 16, 2005 date with May 31, 2005.

On page 16267, third column, under **SUPPLEMENTARY INFORMATION**, under ''Dates'' caption, first sentence, correct the May 16, 2005 date with May 31, 2005.

On page 16267, third column, under **SUPPLEMENTARY INFORMATION**, under ''Dates'' caption, second sentence, correct the June 28, 2005 date with July 14, 2005.

On page 16268, in the first column, under High Priority Areas for Funding Consideration, second paragraph, add at the end of the second sentence the following:

The expected outputs/outcomes are included in the threshold eligibility criteria in Section III.3. for each priority area topic.

EPA defines ''outputs'' as an environmental activity, effort, and/or associated work products related to an environmental goal or objective, that will be produced or provided over a period of time or by a specified date. Outputs may be quantitative or qualitative but must be measurable during an assistance agreement funding period.

Outcomes are defined as the result, effect, or consequence that will occur from carrying out an environmental program or activity that is related to an environmental or programmatic goal or objective. Outcomes may be environmental, behavioral, health-related or programmatic in nature, must be quantitative, and may not necessarily

be achievable with an assistance agreement funding period.''

On page 16269, second column, after the fourth bullet of the ''Watershed—Based Permitting'' caption, add the following:

• Successful completion of the project should result in the development of a new NPDES permitting issuance strategy that maximizes the use of resources to achieve environmental results and better protect entire watersheds.

On page 16269, second column, after the eighth bullet of the ''Water Quality Trading'' caption, add the following:

• Successful completion of the project should result in the development of a water quality trading process which will aid in complying with discharge limitations while improving and preserving water quality.

On page 16269, third column, after the first bullet of the ''Cross-Program Training on Water Quality Modeling'' caption, add the following:

• Successful completion of this training program should result in new avenues for Region 6 States to better coordinate resources and investigate innovative resolutions to water quality issues and development of TMDLs, especially at the watershed level, in support of State and National goals to reduce impaired waters in those States.

On page 16270, in the second column, under the proposal format, add at the end of *Environmental Results and Outcomes:* the following:

''This section should also include a plan to track and measure progress toward achieving the expected outputs and outcomes.''

On page 16270, in the second column, under the proposal format, add at the end of *Describe Applicant's Capability To Perform Work:* the following:

''This section should also include information on performance of past EPA Region 6 projects similar in scope and relevance to the proposed project.''

On page 16270, second column, under ''3. Submission Dates and Times'' caption, first sentence correct the May 16, 2005 date with May 31, 2005.

On page 16270, in the third column, under Section V. Application Review Information, 1. Criteria, fourth bullet, delete ''and the quality of the evaluation component to assess or measure the environmental outcome(s)'' and replace with ''including the adequacy of the applicant's plan to track and measure progress toward achieving the expected outputs and outcomes.''

On page 16271, first column, second bullet, delete ''if applicable.'' under past performance criteria. Therefore, this criteria should read ''Applicant's past performance. (5)''.

Dated: April 11, 2005.

Miguel I. Flores,

Director, Water Quality Protection Division, Region 6.

[FR Doc. 05–7802 Filed 4–19–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL –7901–5]

Science Advisory Board Staff Office; Clean Air Scientific Advisory Committee (CASAC); Consultation on Ozone Health Assessment Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) Science Advisory Board (SAB) Staff Office announces a public meeting of the Clean Air Scientific Advisory Committee's (CASAC) Ozone Review Panel (Panel) to conduct a consultation on EPA's draft Ozone Health Assessment Plan: Scope and Methods for Exposure Analysis and Risk Assessment (April 2005).

DATES: May 5, 2005. The meeting will be held Thursday, May 5, 2005, from 3 to 5 p.m. (eastern time).

Location: The meeting will take place at the Hilton Raleigh-Durham Airport at Research Triangle Park, 4810 Page Road, Research Triangle Park, NC 27709.

FOR FURTHER INFORMATION CONTACT: Any member of the public who wishes to obtain the teleconference call-in numbers and access codes; would like to submit written or brief oral comments (five minutes or less); or wants further information concerning this meeting, must contact Mr. Fred Butterfield, Designated Federal Officer (DFO), EPA Science Advisory Board (1400F), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; via telephone/voice mail: (202) 343–9994; fax: (202) 233–0643; or e-mail at: *butterfield.fred@epa.gov.* General information concerning the CASAC or the EPA Science Advisory Board can be found on the EPA Web site at: *http://www.epa.gov/sab.*

SUPPLEMENTARY INFORMATION:

Background: Under section 108 of the Clean Air Act (CAA or Act), the Agency is required to establish National Ambient Air Quality Standards (NAAQS) for each pollutant for which EPA has issued criteria, including ozone (O_3). Section 109(d) of the CAA subsequently requires periodic review and, if appropriate, revision of existing air quality criteria and standards to reflect advances in scientific knowledge on the effects of the pollutant on public health and welfare. The Agency revised the NAAQS for O_3 in July 1997. EPA's Office of Research and Development (ORD) has recently released a draft updated air quality criteria document for O_3 (draft Ozone AQCD). The CASAC Ozone Review Panel will convene to conduct a peer review on this draft Ozone AQCD on May 4–5, 2005. EPA's Office of Air Quality Planning and Standards (OAQPS), within the Office of Air and Radiation (OAR), is in the process of developing a draft updated Staff Paper for O_3 as part of its review of the O_3 NAAQS. This draft Staff Paper will evaluate the policy implications of the key scientific and technical information contained in the draft Ozone AQCD and identify critical elements that EPA believes should be considered in the review of the O_3 NAAQS. The O_3 Staff Paper is intended to ''bridge the gap'' between the scientific review contained in the Ozone AQCD and the public health and welfare policy judgments required of the EPA Administrator in reviewing the O_3 NAAQS. Key components of this O_3 Staff Paper include a quantitative population exposure analysis and health risk assessment. OAQPS has developed a draft Ozone Health Assessment Plan which includes a discussion of the scope, approaches, and methods that staff is planning to use in conducting the population exposure analysis and health risk assessment.

EPA is soliciting advice and recommendations from the CASAC by means of a consultation on the draft Ozone Health Assessment Plan. The CASAC, which is comprised of seven members appointed by the EPA Administrator, was established under section 109(d)(2) of the CAA (42 U.S.C. 7409) as an independent scientific advisory committee, in part to provide advice, information and recommendations on the scientific and technical aspects of issues related to air quality criteria and NAAQS under sections 108 and 109 of the Act. The CASAC is a Federal advisory committee chartered under the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C., App. The CASAC Ozone Review Panel will comply with the provisions of FACA and all appropriate SAB Staff Office procedural policies.

Technical Contact: Any questions concerning the draft Ozone Health Assessment Plan should be directed to Mr. Harvey Richmond, OAQPS, at

phone: (919) 541–5271, or e-mail: *richmond.harvey@epa.gov.*

Availability of Meeting Materials: The draft Ozone Health Assessment Plan can be accessed via the Agency's Technology Transfer Network (TTN) Web site at: *http://www.epa.gov/ttn/naaqs/standards/ozone/s_o3_index.html* under ''Planning Documents.''

In addition, a copy of the draft agenda for this meeting will be posted on the SAB Web site at: *http://www.epa.gov/sab* (under the ''Agendas'' subheading) in advance of this CASAC Ozone Review Panel meeting. Other meeting materials, including the charge to the CASAC Ozone Review Panel, will be posted on the SAB Web site at: *http://www.epa.gov/sab/panels/casacorpanel.html* prior to this meeting.

Providing Oral or Written Comments at SAB Meetings: It is the policy of the SAB Staff Office to accept written public comments of any length, and to accommodate oral public comments whenever possible. The SAB Staff Office expects that public statements presented at its face-to-face meetings and teleconferences will not be repetitive of previously-submitted oral or written statements. *Oral Comments:* In general, each individual or group requesting an oral presentation at a meeting or teleconference will be limited to a total time of five minutes (unless otherwise indicated). For scheduling purposes, requests to provide oral comments must be *in writing* (e-mail, fax or mail) and received by Mr. Butterfield no later than noon Eastern Time five business days prior to the meeting in order to reserve time on the meeting agenda. Speakers should bring at least 75 copies of their comments and presentation slides for distribution to the reviewers and public at the meeting. *Written Comments:* Although the SAB Staff Office accepts written comments until the date of the meeting (unless otherwise stated), written comments should be received in the SAB Staff Office no later than noon Eastern Time five business days prior to the meeting so that the comments may be made available to the CASAC Ozone Review Panel for their consideration. Comments should be supplied to Mr. Butterfield (preferably via e-mail) at the address/contact information noted above, as follows: one hard copy with original signature, and one electronic copy via e-mail (acceptable file format: Adobe Acrobat PDF, WordPerfect, MS Word, MS PowerPoint, or Rich Text files (in IBM–PC/Windows 98/2000/XP format)). Those providing written comments and who attend the meeting in person are also asked to bring 75 copies of their comments for public distribution.

Meeting Access: Individuals requiring special accommodation at this meeting, including wheelchair access to the conference room, should contact Mr. Butterfield at the phone number or an e-mail address noted above at least five business days prior to the meeting so that appropriate arrangements can be made.

Dated: April 14, 2005.

Vanessa T. Vu,

Director, PA Science Advisory Board Staff Office.

[FR Doc. 05–7935 Filed 4–19–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–2005–0012; FRL–7712–5]

Endocrine Disruptor Methods Validation Advisory Committee (EDMVAC); Notice of Public Meeting; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA announced in the **Federal Register** of April 8, 2005, a meeting of the Endocrine Disruptor Methods Validation Advisory Committee (EDMVAC) on April 26–28, 2005, in Washington, DC. The document incorrectly listed the weekdays of the actual meeting. This document corrects that error.

DATES: The meeting will be held on Tuesday, April 26, 2005, from 12:30 p.m. to 5:30 p.m.; Wednesday, April 27, 2005, from 8:30 a.m. to 6:30 p.m.; and Thursday, April 28, 2005, from 8 a.m. to 12:15 p.m., eastern standard time.

ADDRESSES: The meeting will be held at RESOLVE, 1255 23rd St., NW., Suite 275, Washington, DC 20037.

FOR FURTHER INFORMATION CONTACT: Jane Smith, Designated Federal Official (DFO), Office of Science Coordination and Policy (7203M), Office of Prevention, Pesticides and Toxic Substances (OPPTS), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–8476; fax number: (202) 564–8482; e-mail address: *smith.jane-scott@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

The Agency included in the April 8, 2005, Notice a list of those who may be potentially affected by the action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document or Other Related Documents?

In addition to using EDOCKET (*http://www.epa.gov/edocket/*), you may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at*http://www.epa.gov/fedrgstr/*.

A list of the EDMVAC members and meeting materials are available at *http://www.epa.gov/scipoly/oscpendo/* and in the public docket.

II. What Does this Correction Do?

In the **Federal Register** of April 8, 2005 (70 FR 17995) (FRL–7708–9), EPA published a notice announcing a meeting of the Endocrine Disruptor Methods Validation Advisory Committee (EDMVAC) on April 26–28, 2005, in Washington, DC. The document incorrectly listed the weekdays of the actual meeting.

The document is corrected as follows:

On page 17995, third column, the first sentence under the ''**DATES**'' unit is corrected to read as follows:

''The meeting will be held on Tuesday, April 26, 2005, from 12:30 p.m. to 5:30 p.m.; Wednesday, April 27, 2005, from 8:30 a.m. to 6:30 p.m.; and Thursday, April 28, 2005, from 8 a.m. to 12:15 p.m., eastern standard time.''

List of Subjects

Environmental protection, Endocrine disruptors, Hazardous substances, Health, Safety.

Dated: April 15, 2005.

Larry Dorsey,

Acting Director, Office of Science Coordination and Policy.

[FR Doc. 05–7919 Filed 4–19–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2005–0076; FRL–7703–9]

Aluminum-magnesium Hydroxy Carbonate; Notice of Filing a Pesticide Petition for Exemption from Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition

proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket identification (ID) number OPP–2005–0076, must be received on or before May 20, 2005.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Kathleen Martin, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–2857; e-mail address: *martin.kathleen@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS 111)
- Animal production (NAICS 112)
- Food manufacturing (NAICS 311)
- Pesticide manufacturing (NAICS 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established an official public docket for this action under docket ID number OPP–2005–0076. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically*. If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your

comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPP–2005–0076. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail*. Comments may be sent by e-mail to *opp-docket@epa.gov,* Attention: Docket ID Number OPP–2005–0076. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM*. You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail*. Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2005–0076.

3. *By hand delivery or courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA, Attention: Docket ID Number OPP–2005–0076. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1.Explain your views as clearly as possible.

2.Describe any assumptions that you used.

3.Provide copies of any technical information and/or data you used that support your views.

4.If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5.Provide specific examples to illustrate your concerns.

6.Make sure to submit your comments by the deadline in this notice.

7.To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: March 30, 2005

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

The petitioner summary of the pesticide petition is printed below as required by FFDCA section 408(d)(3). The summary of the petition was prepared by the petitioner and represents the view of the petitioner. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed. EPA has not fully evaluated the merits of this pesticide petition. The summary may have been edited by EPA if the terminology used was unclear, the summary contained extraneous material, or the summary unintentionally made the reader conclude that the findings reflected EPA's position and not the position of the petitioner.

Keller & Heckman LLP

PP 5E6907

EPA has received a pesticide petition (5E6907) from Keller & Heckman LLP, 1001 G St., NW., Suite 500, Washington, DC 20001, proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 to establish an exemption from the requirement of a tolerance for aluminum-magnesium hydroxy carbonate (CAS No. 85585–93–9) when used in the formulation process for antimicrobial pesticides used on food-contact surfaces and in water that contacts raw agricultural commodities postharvest. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

An analytical method for residues is not applicable, as this petition proposes an exemption from the requirement of a tolerance.

B. Toxicological Profile

Hydrated aluminum oxide and magnesium oxide (MgO) are the principal components of aluminum-magnesium hydroxy carbonate. Both of these materials have been reviewed by EPA, and are exempt from the requirement of a tolerance without limitation at 40 CFR 180.910 when used in pesticide formulations that are applied to growing crops, or to postharvest raw agricultural commodities. Additionally, EPA has exempted a similar substance, magnesium carbonate, from the requirement of a tolerance at 40 CFR 180.910. The stability of aluminum-magnesium hydroxy carbonate (insoluble except in strong acids) indicates that it does not present a greater potential for exposure to the components used in its preparation, and the uses proposed for it are identical to uses that are currently cleared by EPA for the starting materials (flow agent and solid diluent).

1. *Acute toxicity*. To assess the acute toxicity, the composition of aluminum-magnesium hydroxy carbonate was compared to aluminum oxides and hydroxides, to magnesium oxides and hydroxides, and to other components used to produce the finished product. When manufactured, aluminum-magnesium hydroxy carbonate forms a layered lattice, similar to that of clay minerals. It may be further formed into shapes, or used as a loose powder to absorb moisture in dry formulations. Magnesium oxide and aluminum hydroxide are used in antacids sold over the counter in the United States. No acute toxicity data were identified for oxides or hydroxides of magnesium or aluminum. However, the salts of these metals have been assessed in acute toxicity studies.

An acute toxicity study of magnesium chloride ($MgCl_2$) administered intravenously in ICR (ICR refers to a strain of mice) mice identified an LD_{50} (lethal dose that causes death to half the test animals) of 14.4 mg/kg bw. However, $MgCl_2$ administered via the oral route resulted in an LD_{50} of >2,500 mg/kg bw. In reports of human exposure to magnesium compounds, large doses (unspecified) can cause metabolic alkalosis, diarrhea, dehydration, and cardiac arrest. Exposure to MgO fumes has been associated with leukocytosis and fever.

Male mice were administered aluminum sulfate ($Al(SO_4)_3$) or aluminum chloride ($AlCl_3$) via oral gavage. The LD_{50} was reported as 980 milligrams aluminum/kilograms body weight (mg aluminum/kg bw,) and the LD_{50} of $AlCl_3$ as 770 mg aluminum/kg bw.

An acute inhalation study of aluminum dust was completed in male Fischer rats. Rats were exposed to nominal chamber concentrations of 10, 50, 100, 200 and 1,000 mg/m^3 for four hours (mean geometric particle diameter of 2.82 µm). The acute inhalation LC_{50} (lethal concentration of the test substance to half the animals) of aluminum metal is reported as greater than 1,000 mg aluminum/m^3, as no animal fatalities occurred during the study.

2. *Genotoxicity*. The mutagenic potential of $AlCl_3$ in *Salmonella typhimurium* strain TA102 was studied at doses of 10, 30, 100, 300 and 1,000 nM per plate. No base-pair substitutions or frame shift mutations were observed at up to 1,000 nM/plate.

A mouse lymphoma mutagenicity assay was completed with several metal salts, including $MgCl_2$ and $AlCl_3$. Exposure of cells to $MgCl_2$ from 22,000 to 32,000 µg/mL resulted in no increase in mutations over the negative control. Exposure to $AlCl_3$ from 570 to 625 µg/mL resulted in a two-fold increase in mutations over the negative control, but was not considered to be related to exposure to $AlCl_3$, since survival was not related to dose.

Male albino rats, 8 weeks old, were administered (by gavage) $Al_2(SO_4)_3 \cdot 18 H_2O$ suspended in deionized water; 15 animals/dose received 212, 265, 353, 530, 1,060 or 2,120 mg/kg bw for 21 days. Prolonged treatment of rats with aluminum sulfate caused a dose-dependent inhibition of dividing cells (bone marrow) and an increase in chromosomal aberrations.

3. *Reproductive and developmental toxicity*. Magnesium is an essential mineral in animals, and its deficiency has been linked to reduced viability, increased resorptions, skeletal malformations, and heart and lung anomalies in rats. No adverse developmental effects of excessive intake of magnesium were identified.

The reproductive and developmental toxicity of aluminum is unclear, based on two separate studies reported by a particular investigator. Pregnant Wistar rats were administered 0, 192, 384, or 768 mg $Al(OH)_3$/kg bw/day through gestation day 20, sacrificed, and maternal and fetal effects recorded. There were no maternal or developmental effects in any of the treatment groups that differed from those of the control group of rats. A no-observed-effects-level (NOEL) of 768 mg/kg/day was reported. Pregnant Sprague-Dawley rats were administered $Al(OH)_3$ (384 mg/kg), $Al(OH)_3$ plus citric acid (384 mg/kg and 62 mg/kg, respectively), or aluminum citrate (1,064 mg/kg) by gavage on gestation days 6 to 15. All animals were sacrificed on gestation day 20, and maternal and fetal effects recorded. Maternal body weights were significantly reduced in the aluminum hydroxide/citric acid treatment group. Fetal body weights were significantly lower in the aluminum hydroxide/citric acid treatment group, and the incidence of fetal skeletal development defects was significantly increased.

4. *Subchronic toxicity*. Male Sprague-Dawley rats were administered aluminum hydroxide (302 mg aluminum/kg), sodium aluminum phosphate (141 mg aluminum/kg), or dibasic sodium aluminum phosphate (67 or 288 mg aluminum/kg) in the diet for 28 days. No treatment-related effects were reported at any dose in any of the treatment groups, when compared to the control. Male and female beagle dogs were administered sodium aluminum phosphate for six months; mean dietary concentrations were 0, 118, 317, and 1,034 mg/kg/day in male dogs, and 112, 361, and 1,087 mg/kg/day in female dogs. No treatment-related effects were reported, except for a sporadic decrease in food intake in females of all treatment groups, without a corresponding decrease in body weight. A NOEL of 1,034 mg/kg bw/day was reported.

5. *Chronic toxicity*. Several studies suggest that aluminum is not carcinogenic, and that it may induce a protective immune response to implanted tumors. Both reviews suggest that results of epidemiological studies linking aluminum compounds to cancers are questionable.

Male Syrian golden hamsters received 2 mg MgO, aluminum oxide (Al_2O_3), or carbon in 0.9% sodium chloride (NaCl) solution by intratracheal instillation once per week for 30 weeks. Negative and positive controls were 0.9% NaCl solution and diethylnitrosamine, respectively. No tumors were identified in hamsters in the Al_2O_3 treatment group, although lung fibrosis, macrophages, and multinucleated giant cells were observed. The MgO treatment group had a significantly higher incidence of histiocytic lymphomas than the negative control. Interestingly, hamsters treated simultaneously with diethylnitrosamine (subcutaneous injection) and MgO did not develop similar lymphomas.

6. *Animal metabolism*. Magnesium is an essential mineral in animals. It is used therapeutically to treat hypertension, myocardial infarction, and cardiac arrhythmia. Large doses of magnesium salts are administered orally to cleanse the colon prior to endoscopic procedures. Normal human serum contains 2 to 5 mg magnesium/dL. Magnesium salts are poorly absorbed from the intestines, and cause osmotic withdrawal of water into the intestinal lumen; it is ultimately excreted in the feces.

Aluminum metabolism is compound-dependent, but is generally very low. Approximately 0.01% of aluminum hydroxide is absorbed when administered via the oral route. Consequently, the majority is excreted in the feces, and the remainder is excreted in the urine. Distribution of aluminum compounds is not well understood, due to the levels that occur naturally in and outside the body. Aluminum that is absorbed is generally sequestered in bone tissue, and gradually accumulates over time.

7. *Endocrine disruption*. No evidence of endocrine disruption from magnesium compounds or aluminum compounds was identified.

C. Aggregate Exposure

1. *Dietary exposure* — i.*Food*. Exposure to aluminum-magnesium hydroxy carbonate from food is not anticipated, due to its insolubility (except in strong acids) and the lack of potential for contact with food or food-contact surfaces under the proposed conditions of use. Additionally, the components in aluminum-magnesium hydroxy carbonate (Al_2O_3, magnesium carbonate, and MgO) are all exempt from the requirement of a tolerance at 40 CFR 180.910 without limitation. EPA has already assessed the dietary risks of these substances, and determined that limitations on their use in pesticides are not warranted when they are used individually or in combination in pesticide formulations that are applied to growing crops or to postharvest raw agricultural commodities.

ii. *Drinking water*. Both aluminum and magnesium compounds are present in natural water that may be used for drinking. EPA has not established a maximum contaminant level (MCL) for magnesium. The EPA National Secondary Drinking Water Standard for aluminum in drinking water is 0.05 to 0.2 mg/L. The use of aluminum-magnesium hydroxy carbonate as an inert ingredient is not expected to result in additional exposure to aluminum compounds in drinking water, as it is insoluble when used as intended, as described above.

2. *Nondietary exposure*. There is no anticipated worker exposure to aluminum-magnesium hydroxy carbonate from application of the pesticides in which it will be used. Nondietary exposures to aluminum-magnesium hydroxy carbonate may result from its use as a stabilizer in polyvinyl chloride, and its use as a catalyst to polymerize propylene oxide. These reactions occur in contained vessels, and no exposure to aluminum-magnesium hydroxy carbonate would occur except during loading of the reactants. Similarly, during manufacture of pesticides to which aluminum-magnesium hydroxy carbonate is added, the components are mixed in closed vessels, and limited exposure to workers is anticipated.

D. Cumulative Effects

No cumulative effects from a common mechanism of toxicity is expected to result from the use of aluminum-magnesium hydroxy carbonate in pesticide formulations.

E. Safety Determination

Based on the information available, the petitioner believes that there is no expectation that the U.S. population, including infants and children, will be at increased risk from potential exposure to residues of aluminum-magnesium hydroxy carbonate. It is insoluble except in strong acids, and the components used to manufacture the finished inert ingredient have been individually evaluated and granted exemptions from the requirement of a tolerance at 40 CFR 180.910.

F. International Tolerances

No international tolerances are known to exist for residues of aluminum-magnesium hydroxy carbonate.

[FR Doc. 05–7330 Filed 4–19–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2005–0099; FRL–7709–6]

Issuance of an Experimental Use Permit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted an experimental use permit (EUP) to the following pesticide applicant. An EUP permits use of a pesticide for experimental or research purposes only in accordance with the limitations in the permit.

FOR FURTHER INFORMATION CONTACT: Sharlene R. Matten, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 605–0514; e-mail address: *matten.sharlene@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. Although this action may be of particular interest to those persons who conduct or sponsor research on pesticides, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the information in this action, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established an official public docket for this action under docket identification (ID) number OPP–2005–0099. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically.

Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

II. EUP

EPA has issued the following EUP:

72821–EUP–1. Extension. Gargiulo, Inc./BHN Research, P.O. Box 3267, Immokalee, FL 34142. This EUP allows the use of 138.9 grams of the insecticide Cry1Ac insect control protein as expressed in tomato plants on 500 acres of tomato to evaluate the control of various lepidopteran insect pests. The program is authorized only in the States of California, Florida, Georgia, Illinois, Missouri, Puerto Rico, and Virginia. The EUP is effective from March 7, 2005 to March 6, 2006.

Authority: 7 U.S.C. 136c.

List of Subjects

Environmental protection, Experimental use permits.

Dated: April 8, 2005.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 05–7805 Filed 4–19–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

OPPT–2005–0024; FRL–7711–6

Certain New Chemicals; Receipt and Status Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory) to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSC, EPA is required to publish a notice of receipt of a premanufacture notice (PMN) or an application for a test marketing exemption (TME), and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from March 28, 2005 to April 4, 2005, consists of the PMNs pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

DATES: Comments identified by the docket identification (ID) number OPPT–2005–0024 and the specific PMN number or TME number, must be received on or before May 20, 2005.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Colby Lintner, Regulatory Coordinator, Environmental Assistance Division, Office of Pollution Prevention and Toxics (7408M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. As such, the Agency has not attempted to describe the specific entities that this action may apply to. Although others may be affected, this action applies directly to the submitter of the premanufacture notices addressed in the action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket ID number OPPT–2005–0024. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center, Rm. B102-Reading Room, EPA West, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The EPA Docket Center Reading Room telephone number is (202) 566–1744 and the telephone number for the OPPT Docket, which is located in EPA Docket Center, is (202) 566–0280.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing

copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number and specific PMN number or TME number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically*. If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPPT–2005–0024. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail*. Comments may be sent by e-mail to *oppt.ncic@epa.gov*, Attention: Docket ID Number OPPT–2005–0024 and PMN Number or TME Number. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM*. You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail*. Send your comments to: Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

3. *By hand delivery or courier*. Deliver your comments to: OPPT Document Control Office (DCO) in EPA East Bldg., Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID Number OPPT–2005–0024 and PMN Number or TME Number. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the notice or collection activity.
7. Make sure to submit your comments by the deadline in this document.
8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action and the specific PMN number you are commenting on in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Why is EPA Taking this Action?

Section 5 of TSCA requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a PMN or an application for a TME and to publish

periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from March 28, 2005 to April 4, 2005, consists of the PMNs pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

III. Receipt and Status Report for PMNs

This status report identifies the PMNs pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period. If you are interested in information that is not included in the following tables, you may contact EPA as described in Unit II. to access additional non-CBI information that may be available.

In Table I of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the PMNs received by EPA during this period: the EPA case number assigned to the PMN; the date the PMN was received by EPA; the projected end date for EPA's review of the PMN; the submitting manufacturer; the potential uses identified by the manufacturer in the PMN; and the chemical identity.

I. 20 PREMANUFACTURE NOTICES RECEIVED FROM: 03/25/05 TO 04/04/05

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–05–0446	03/28/05	06/25/05	Uniqema	(S) Cleaner; person care	(G) 1-propanaminium, 2,3-dihydroxy-n,n-dimethyl-n-[3-[(fatty acid)amino]propyl-,chloride
P–05–0458	03/28/05	06/25/05	CBI	(G) Performance enhancer for engineering materials	(G) Polyetherimide made using substituted phthalic anhydride and diamine
P–05–0459	03/28/05	06/25/05	CBI	(G) Industrial coating	(S) Oxirane, methyl-, polymer with 1,3-diisocyanatomethylbenzene and oxirane, 2-hydroxyethyl acrylate- and 2-phenoxyethanol-blocked
P–05–0460	03/28/05	06/25/05	Wacker Silicones a Division of Wacker Chemical Corporation	(S) Additive for plastics and rubbers	(G) Polymer of aminoalkyl terminated polysiloxane with alkyl isocyanate
P–05–0461	03/30/05	06/27/05	CIBA Specialty Chemicals Corporation	(S) Dye for aqueous ink-jet inks	(G) Substituted copper naphthalene sulfonic acid hydroxyethyl sulfono azo salt
P–05–0464	03/31/05	06/28/05	CBI	(G) Paint additive	(G) 2-alkenoic acid, 2-alkyl-, polymer with alkyl 2-alkyl-2-alkenoate, alkenylbenzene, 2-hydroxyalkyl 2-alkyl-2-alkenoate and ..alpha.-(2-alkyl-1-oxo-2-alkenyl)-.omega.-(phosphonoxy)poly[oxy(alkyl-1,2-alkanediyl)], tert-alkyl 2-alkaneperoxoate-initiated
P–05–0465	04/01/05	06/29/05	CBI	(G) Pigment	(G) Acrylic acid polymer with vinylated benzenes and substituted propanediol trimethacrylate
P–05–0466	04/01/05	06/29/05	CBI	(G) Component of mixture for highly dispersive applications.	(G) Alkyl-substituted indanone
P–05–0467	04/04/05	07/02/05	CBI	(G) An ancillary chemical for semiconductor manufacturing	(G) Fluoriated vinyl ester polymer
P–05–0468	04/04/05	07/02/05	CBI	(G) Coating component	(G) 1,1′-methylenebis[isocyanatobenzene], polymer with polycarboxylic acids and alkanepolyols
P–05–0469	04/04/05	07/02/05	CBI	(G) Coating component	(G) 1,1′-methylenebis[isocyanatobenzene], polymer with polycarboxylic acids and alkanepolyols
P–05–0470	04/04/05	07/02/05	CBI	(G) Coating component	(G) 1,1′-methylenebis[isocyanatobenzene], polymer with polycarboxylic acids and alkanepolyols
P–05–0471	04/04/05	07/02/05	CBI	(G) Coating component	(G) 1,1′-methylenebis[isocyanatobenzene], polymer with polycarboxylic acids and alkanepolyols
P–05–0472	04/04/05	07/02/05	CBI	(G) Coating component	(G) 1,1′-methylenebis[isocyanatobenzene], polymer with polycarboxylic acids and alkanepolyols

I. 20 PREMANUFACTURE NOTICES RECEIVED FROM: 03/25/05 TO 04/04/05—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–05–0473	04/04/05	07/02/05	CBI	(G) Coating component	(G) 1,1′-methylenebis[isocyanatobenzene], polymer with polycarboxylic acids and alkanepolyols
P–05–0474	04/04/05	07/02/05	CBI	(G) Surface cleaning	(G) Organic acid, amine salt
P–05–0475	04/04/05	07/02/05	CBI	(S) Coatings application	(G) Acetoacetate functional acrylic polyol
P–05–0476	04/04/05	07/02/05	CBI	(S) Binder in hot melt inks and molding compounds	(G) Cyclic diamine bisamide with monocarboxylic fatty acids.
P–05–0477	04/04/05	07/02/05	CBI	(S) Binder in hot melt inks and molding compounds	(G) Cyclic diamine amides with dicarboxylic and monocarboxylic fatty acids.
P–05–0478	04/04/05	07/02/05	CBI	(S) Binder in hot melt inks and molding compounds	(G) Cyclic diamine amides with dicarboxylic and monocarboxylic fatty acids

In Table II of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the Notices of Commencement to manufacture received:

II. 18 NOTICES OF COMMENCEMENT FROM: 03/28/05 TO 04/04/05

Case No.	Received Date	Commencement Notice End Date	Chemical
P–01–0058	03/29/05	03/21/05	(G) Counter ions of alkenes, hydroformylation products, distn. residues
P–02–0554	03/28/05	01/14/05	(G) Polyurethane dispersion
P–03–0717	03/28/05	03/07/05	(G) Alcohol blocked polymeric isocyanate
P–03–0808	04/04/05	03/17/05	(G) Semiconducting light emitting polyfluorene copolymer
P–04–0805	03/28/05	03/08/05	(G) Homopolymer of amino-substituted methacrylic acid
P–04–0858	03/28/05	03/05/05	(G) Alkaryl sulfonic acid
P–04–0863	03/28/05	02/24/05	(G) Benzene alkylate
P–04–0870	03/28/05	03/10/05	(G) Alkaryl sulfonic acid, metal salts
P–05–0053	03/28/05	03/08/05	(G) Formic acid, compound with (chloromethyl)oxirane polymer with alykyldiamine, 4,4′-(1-methylethylidene)bis[phenol] and tetradecyloxirane, acetate (salt)
P–05–0087	04/04/05	03/24/05	(S) Spiro[5.5]undec-8-en-1-ol, 2,2,9,11-tetramethyl-, acetate
P–05–0132	03/28/05	03/21/05	(G) Waterborne polyurethane
P–05–0170	03/31/05	03/28/05	(G) Acrylic emulsion polymer
P–05–0171	03/31/05	03/28/05	(G) Acrylic emulsion polymer
P–05–0172	03/31/05	03/28/05	(G) Acrylic emulsion polymer
P–05–0173	03/31/05	03/28/05	(G) Acrylic emulsion polymer
P–05–0174	03/31/05	03/28/05	(G) Acrylic emulsion polymer
P–05–0175	03/31/05	03/28/05	(G) Acrylic emulsion polymer
P–05–0187	03/31/05	03/28/05	(G) Polycarbonate

List of Subjects

Environmental protection, Chemicals, Premanufacturer notices.

Dated: April 13, 2005.

Vicki A. Simons,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 05–7803 Filed 4–19–05; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may obtain copies of agreements by contacting the Commission's Office of Agreements at 202–523–5793 or via email at tradeanalysis@fmc.gov. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement Nos.: 010050–014.

Title: U.S. Flag Discussion Agreement.

Parties: American President Lines, Ltd.; A.P. Moller-Maersk A/S; Farrell Lines Inc.; Lykes Lines Limited, LLC; and P&O Nedlloyd Limited.

Filing Party: Wayne R. Rohde, Esq.; Sher &Blackwell; 1850 M Street, NW., Suite 900; Washington, DC 20036.

Synopsis: The amendment deletes Ukraine from the geographic scope of the agreement.

Agreement No.: 010776–127.

Title: Asia North America Eastbound Rate Agreement.

Parties: American President Lines, Ltd.; APL Co. Pte Ltd.; Hapag-Lloyd Container Line GmbH; Kawasaki Kisen Kaisha, Ltd.; Mitsui O.S.K. Lines, Ltd.; A. P. Moller-Maersk A/S; Nippon Yusen

Kaisha Line; Orient Overseas Container Line Limited; P&O Nedlloyd B.V.; and P&O Nedlloyd Limited.

Filing Party: David F. Smith, Esq.; Sher & Blackwell; 1850 M Street, NW., Suite 900; Washington, DC 20036.

Synopsis: The modification extends the suspension of the conference through November 1, 2005.

Agreement No.: 011284–056.

Title: Ocean Carrier Equipment Management Association Agreement (''OCEMA'').

Parties: APL Co. Pte. Ltd.; American President Lines, Ltd.; A.P. Moller-Maersk A/S, trading under the name of Maersk Sealand; CMA CGM, S.A.; Compania Sudamericana deVapores, S.A.; Evergreen Marine Corp. (Taiwan) Ltd.; Hanjin Shipping Co., Ltd.; Hamburg-Sud; Hapag-Lloyd Container Linie GmbH; Hyundai Merchant Marine Co. Ltd.; Mitsui O.S.K. Lines Ltd.; Lykes Lines Limited, LLC; TMM Lines Limited, LLC; Contship Containerlines, a division of CP Ships (UK) Limited; Australia-New Zealand Direct Line, a division of CP Ships (UK) Limited; Orient Overseas Container Line Limited; P&O Nedlloyd Limited; P&O Nedlloyd B.V.; Nippon Yusen Kaisha Line; Yangming Marine Transport Corp.; COSCO Containerlines Company Limited; and Kawasaki Kisen Kaisha, Ltd.

Filing Party: Jeffrey F. Lawrence, Esq.; and Donald J. Kassilke, Esq.; Sher & Blackwell LLP; 1850 M Street, NW., Suite 900; Washington, DC 20036.

Synopsis: The agreement removes Crowley Maritime Corporation as a party to the agreement.

Agreement No.: 011325–031.

Title: Westbound Transpacific Stabilization Agreement.

Parties: American President Lines, Ltd.; APL Co. Pte Ltd.; China Shipping Container Lines Co., Ltd.; COSCO Container Lines Company Limited; Evergreen Marine Corporation (Taiwan), Ltd.; Hanjin Shipping Co., Ltd.; Hapag-Lloyd Container Line GmbH; Kawasaki Kisen Kaisha, Ltd.; Mitsui O.S.K. Lines, Ltd.; A. P. Hyundai Merchant Marine Co. Ltd.; Kawasaki Kisen Kaisha Ltd.; Mitsui O.S.K. Lines, Ltd.; Nippon Yusen Kaisha Line; Orient Overseas Container Line Limited; P&O Nedlloyd B.V.; P&O Nedlloyd Limited and Yangming Marine Transport Corp.

Filing Party: David F. Smith, Esq.; Sher & Blackwell; 1850 M Street, NW., Suite 900; Washington, DC 20036.

Synopsis: The amendment adds a provision setting forth a means of allocating certain penalties in the event the agreement is held liable.

Agreement No.: 201149–001.

Title: Port Inland Distribution Network Service Agreement Between the Port Authority of New York & New Jersey and the Albany Port District Commission.

Parties: The Port Authority of New York and New Jersey (''PANYNJ''); and The Albany Port District Commission (''APDC'').

Filing Party: Paul M. Donovan, Esq.; LaRoe, Winn, Moerman & Donovan; 4135 Parkglen Court, NW., Washington, DC 20007.

Synopsis: The agreement modification would change the procedures under which the PANYNJ will make payments to the APDC. The parties request expedited review.

Dated: April 15, 2005.

By Order of the Federal Maritime Commission.

Bryant L VanBrakle,

Secretary.

[FR Doc. 05–7940 Filed 4–19–05; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

A De Novo Corporation to do Business Under Section 25A of the Federal Reserve Act

An application has been submitted for the Board's approval of the organization of a corporation to do business under section 25A of the Federal Reserve Act (''Edge Corporation'') 12 U.S.C. Sec. 611 *et seq.* The factors that are to be considered in acting on the application are set forth in the Board's Regulation K (12 CFR 211.5).

The application listed below is available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identify specifically any questions of fact that are in dispute, and summarize the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding this application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 19, 2005.

A. Federal Reserve Bank of Philadelphia (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105-1521:

1. MBNA America Bank, N.A.; to establish an Edge Corporation, MBNA International Investment Corporation, both of Wilmington, Delaware.

Board of Governors of the Federal Reserve System, April 14, 2005.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 05–7839 Filed 4–19–05; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 13, 2005.

A. Federal Reserve Bank of Philadelphia (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105-1521:

1. Fulton Financial Corporation, Lancaster, Pennsylvania; to merge with SVB Financial Services, Inc., Somerville, New Jersey, and thereby indirectly acquire Somerset Valley Bank, Somerville, New Jersey.

B. Federal Reserve Bank of Atlanta (Andre Anderson, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30303:

1. American Southern BanCorp, Inc., Roswell, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of American Southern Bank, Roswell, Georgia (in organization).

Board of Governors of the Federal Reserve System, April 14, 2005.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 05–7838 Filed 4–19–05; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Notice of Interest Rate on Overdue Debts

Section 30.13 of the Department of Health and Human Services' claims collection regulations (45 CFR part 30) provides that the Secretary shall charge an annual rate of interest as fixed by the Secretary of the Treasury after taking into consideration private consumer rates of interest prevailing on the date that HHS becomes entitled to recovery. The rate generally cannot be lower than the Department of Treasury's current value of funds rate or the applicable rate determined from the ''Schedule of Certified Interest Rates with Range of Maturities.'' This rate may be revised quarterly by the Secretary of the Treasury and shall be published quarterly by the Department of Health and Human Services in the **Federal Register**.

The Secretary of the Treasury has certified a rate of 12% for the quarter ended March 31, 2005. This interest rate will remain in effect until such time as the Secretary of the Treasury notifies HHS of any change.

Dated: April 14, 2005.

George Strader,

Deputy Assistant Secretary, Finance.

[FR Doc. 05–7933 Filed 4–19–05; 8:45 am]

BILLING CODE 4150–02–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Addressing Asthma From a Public Health Perspective: Part A; Enhanced; Notice of Availability of Funds

Announcement Type: New.

Funding Opportunity Number: RFA 05044.

Catalog of Federal Domestic Assistance Number: 93.283.

Key Dates: Application Deadline: June 6, 2005.

I. Funding Opportunity Description

Authority: This program is authorized under Sections 301 and 317 of the Public Health Service Act, (42 U.S.C. 241 and 247b), as amended.

Purpose: The purpose of the program is to provide the impetus to further develop program capacity to address asthma from a public health perspective to bring about: (1) A focus of asthma-related activity within the state; (2) an increased understanding of asthma-related data and its application to program planning through development of an ongoing surveillance system; (3) an increased recognition, within the public health structure of a state, of the potential to use a public health approach to reduce the burden of asthma; (4) linkages of the state to many agencies and organizations addressing asthma in the population; and (5) participation in intervention program activities.

This program addresses the ''Healthy People 2010'' focus areas of Environmental Health, Occupational Safety and Health, and Respiratory Diseases.

Epidemiological surveillance is: ''the ongoing systematic collection, analysis, and interpretation of health data essential to the planning, implementation, and evaluation of public health practice, closely integrated with the timely dissemination of these data to those who need to know. The final link in the surveillance chain is the application of these data to prevention and control. A surveillance system includes a functional capacity for data collection, analysis, and dissemination linked to public health programs.'' Refer to citation in Attachment I, ''The Public Health Surveillance of Asthma,'' for more information. (All attachments will be posted with this program announcement on the CDC Web site.)

Measurable outcomes of the program will be in alignment with the following performance goal for the National Center for Environmental Health (NCEH): Reduce the number of deaths, hospitalizations, emergency department visits, school or work days missed, and limitations on activity due to asthma.

This announcement is only for non-research activities supported by CDC. If research is proposed, the application will not be reviewed. For the definition of research, please see the CDC Web site at the following Internet address: *http://www.cdc.gov/od/ads/opspoll1.htm*.

Activities: Awardee Activities for this program are as follows:

- Enhance the existing asthma surveillance system to include (at a minimum) asthma hospitalizations, morbidity (measures from the Behavioral Risk Factor Surveillance System (BRFSS) or equivalent), mortality, and work-related asthma. Conduct analysis of and interpret surveillance data; and disseminate these data through reports to local, state, and federal partners and agencies.
- Implement a defined subset of interventions described in the State Asthma Plan.

—Improve provider compliance with the National Asthma Education and Prevention Program's (NAEPP) ''Guidelines for the Diagnosis and Management of Asthma'' (refer to citation in Attachment I for more information).
—Improve the skills of patients and families affected by asthma to manage the disease.
—Review legislation and policies impacting people with asthma.
—Identify environmental factors that contribute to asthma prevalence and morbidity, and reduce or eliminate exposure to these factors.
—Facilitate communication between those implementing and those affected by planned activities.

- Develop and implement an evaluation plan that measures the effectiveness of your program as a whole, as well as each intervention. Systematically document lessons learned.
- Maintain existing, and expand, as appropriate, statewide coalition and partnership activities; include a workgroup to address work-related asthma, if one does not exist; and evaluate effectiveness of collaboration.
- Maintain a strong commitment within the state to support continued efforts of the asthma program.
- Participate in CDC convened meetings and periodic conference calls for grantees to share experiences, data, and materials.

In a cooperative agreement, CDC staff is substantially involved in the program activities, above and beyond routine grant monitoring. CDC Activities for this program are as follows:

- Provide consultation and guidance to awardees to enhance and expand existing asthma surveillance activities, including data collection methods and data analysis.
- Collaborate with awardees on analysis of asthma data, interpretation

of individual state surveillance data, and release of surveillance reports.

• Provide technical and scientific assistance and consultation on program development, implementation of the State Asthma Plan, intervention activities, and operational issues.

• Serve as a facilitator for communication between states to share expertise regarding various topics, such as the expansion and development of partnerships, implementation of the State Asthma Plan, and surveillance activities.

• Collaborate on the development of an appropriate evaluation plan that measures the effectiveness of the program as a whole and each intervention. Review and provide feedback on evaluation plans, and link awardees to additional expertise from CDC or its contractors.

• Plan and implement conferences and meetings to provide a forum through which awardees can increase their knowledge and skills, learn from each other, share resources, and work collaboratively to address issues related to reducing the burden of asthma.

II. Award Information

Type of Award: Cooperative Agreement. CDC involvement in this program is listed in the Activities Section above.

Fiscal Year Funds: 2005.

Approximate Total Funding: $1,750,000. (This amount is an estimate, and is subject to availability of funds.)

Approximate Number of Awards: 2–5.

Approximate Average Award: $350,000. (This amount is for the first 12-month budget period, and includes both direct and indirect costs.)

Floor of Award Range: None.

Ceiling of Award Range: $350,000. (This ceiling is for the first 12-month budget period.)

Anticipated Award Date: August 31, 2005.

Budget Period Length: 12 months.

Project Period Length: 3 years.

Throughout the project period, CDC's commitment to continuation of awards will be conditioned on the availability of funds, and evidence of satisfactory progress by the recipient (as documented in required reports), and the determination that federal funding is in the best interest of the Federal Government.

III. Eligibility Information

III.1. Eligible Applicants

Entities eligible to receive this funding are those states currently or previously funded under CDC Program Announcement (PA) 01106, ''Addressing Asthma from a Public Health Perspective, Part A Planning''. Those states currently funded under Part A Enhanced or Part B Implementation are excluded.

Eligible applicants are the states of Hawaii, Indiana, Nebraska, Oklahoma, and Washington.

These states may designate their Bona Fide Agents to submit applications. A Bona Fide Agent is an agency/organization identified by the state as eligible to submit an application under the state eligibility in lieu of a state application. If you are applying as a bona fide agent of a state government, you must provide a letter from the state government as documentation of your status. Place this documentation behind the first page of your application form. Only one application from each state may be submitted.

During the initial phase of Addressing Asthma from a Public Health Perspective (PA 01106 Part A Planning), states were required to complete a planning process that entailed developing an asthma surveillance system, establishing partnerships, and collaboratively writing a State Asthma Plan. Successfully completing this process is a prerequisite for states to move into the next phase, Part A Enhanced, where they will begin implementing a limited number of interventions from their state asthma plan. Only those states originally selected via a competitive award process for Part A Planning, and showing evidence of satisfactory progress in achieving Part A objectives, will be eligible.

III.2. Cost Sharing or Matching

Matching funds are not required for this program.

III.3. Other

If you request a funding amount greater than the ceiling of the award range, your application will be considered non-responsive, and will not be entered into the review process. You will be notified that your application did not meet the submission requirements.

Special Requirements: If your application is incomplete or non-responsive to the special requirements listed in this section, it will not be entered into the review process. You will be notified that your application did not meet submission requirements. Late applications will be considered non-responsive. See section ''IV.3. Submission Dates and Times'' for more information on deadlines.

As previously stated, eligible applicants are those entities currently or previously funded by CDC Program Announcement 01106 ''Addressing Asthma from a Public Health Perspective, Part A Planning.'' States currently funded for Part A Enhanced or Part B Implementation are excluded. Eligible states are Hawaii, Indiana, Nebraska, Oklahoma, and Washington.

Applicants must document eligibility with the following:

1. Submit a copy of the final, approved, comprehensive State Asthma Plan. Approval can be documented with a letter from the State's Health or Medical Director *and* a letter from key partners indicating their commitment to and approval of the asthma plan. These letters may be contained within the plan itself. If so, this should be indicated by the applicant. Plans that are pending final approval may be accepted if the entire draft plan is submitted and accompanied by letters from the State Health or Medical Director *and* key partners stating their commitment to and approval of the plan, a time frame for final approval, and a description of the plan's approval process status. The letters should assure that the State Asthma Plan will be completed within the first month of the year one budget period.

2. Have an operational surveillance system for asthma. This may be documented through submission of the most recent, comprehensive published surveillance report that describes asthma within the state, including, if available, a report on asthma in the Medicaid population and for enrollees of the State Children's Health Insurance Program (SCHIP).

Note: Title 2 of the United States Code Section 1611 states that an organization described in Section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, or loan.

IV. Application and Submission Information

IV.1. Address To Request Application Package

To apply for this funding opportunity, use application form PHS 5161–1.

CDC strongly encourages you to submit your application electronically by utilizing the forms and instructions posted for this announcement at *http://www.grants.gov.*

Application forms and instructions are available on the CDC Web site, at the following Internet address: *http://www.cdc.gov/od/pgo/forminfo.htm.*

If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, you may contact the CDC Procurement and

Grants Office, Technical Information Management Section (PGO–TIM) staff at: 770–488–2700. Application forms can be mailed to you.

IV.2. Content and Form of Submission

Application: You must submit a project narrative with your application forms. The narrative must be submitted in the following format:

- Maximum number of pages: 45. If your narrative exceeds the page limit, only the first pages, which are within the page limit, will be reviewed. Budget Justification, State Asthma Plan, and asthma burden reports will not count against the narrative page limit.
- Font size: 12 point unreduced
- Spacing: Double-spaced; single-spaced tables in the narrative are acceptable.
- Paper size: 8.5 by 11 inches
- Page margin size: One inch
- Printed only on one side of page
- Held together only by rubber bands or metal clips; not bound in any other way.
- Written in plain language, avoid jargon.

Your narrative should address activities to be conducted over the entire project period, and must include the following items in the order listed:

1. Description of the Problem

Describe what is known about the asthma burden in the state and efforts to systematically address the problem. Include a description of populations at increased risk of poorly controlled asthma (*e.g.,* gender, age groups, racial/ethnic groups, socio-economic groups, and those located in particular geographic areas).

Identify existing initiatives, capacity, and infrastructure of the agency within which the asthma programs will occur.

Describe how barriers, identified when developing the State Asthma Plan, were addressed.

2. Surveillance Plan

Describe the current operational asthma surveillance system within the state. Include a description of each data set that contains asthma specific items, and that is currently available to, and used by, the asthma program. Discuss the limitations of each data set, and specify the most recent year of data available for analysis. At a minimum, the surveillance system should include measures to track asthma morbidity (asthma prevalence measures from the BRFSS or equivalent), asthma mortality, work-related asthma, and asthma hospitalizations. Medicaid and SCHIP data should be discussed, if available.

Provide a surveillance plan containing the following information:

- Future plans for the data that are currently available to the asthma program (*e.g.,* frequency of analysis and distribution, frequency of publication of comprehensive reports, methods of distribution).
- Additional data the program will obtain and methods for obtaining it.
- Plans for identifying specific populations at risk for poorly controlled asthma (e.g., gender, age groups, racial/ethnic groups, socio-economic groups, or by geographic area).
- How the state will use existing and new data to develop or enhance an ongoing surveillance system.
- How the surveillance data will be used to support policy, program development, implementation, and evaluation activities.

Describe the methods that will be used to analyze, interpret, and disseminate surveillance data through published reports to local, state, and federal partners and agencies.

In addition to cross-sectional analysis, include in the surveillance plan a discussion of how the asthma surveillance system will be used to monitor trends over time.

Applicants funded by this announcement will be expected to use the BRFSS optional ten question adult asthma history module, the BRFSS optional six-question child selection module and the BRFSS optional two question child prevalence module within the first year of the project period, as well as in subsequent years. Applicants should plan to fund their state BRFSS for the ten adult questions and the two child prevalence questions. Since the six questions in the child selection module will be used by other programs, use of this module should be coordinated with those programs, and costs for this module should be shared with those other programs, if possible.

A letter of support from the BRFSS coordinator, which acknowledges the intent to use these modules, must be included in the application. A letter of support from other programs using the child selection module must be included in the application, and should specify intent to share costs.

In place of the ten-question adult asthma history module, the applicant can choose to use the BRFSS Asthma Call-Back Survey. This asthma-only call-back survey will provide extensive additional information on asthma. It will be available to all states for data collection year 2006, with funding provided through the BRFSS funding mechanism. The state asthma program will still need to fund the use of the six question child selection module and the two question child prevalence module to identify children with asthma for the call-back survey. Adults with asthma are identified by the BRFSS core questions. If this call-back survey is used in place of the adult history module, a letter of support from the BRFSS coordinator, which acknowledges agreement with the intent to use the asthma call-back survey, must be included in the application.

If the state asthma program has another method (such as the State and Local Area Integrated Telephone Survey—National Survey of Children's Health) to acquire the same or similar information as that acquired from BRFSS, applicant should provide a detailed justification and description of alternate information and methodology.

Submit copies of the most recent, comprehensive, published surveillance report that describes asthma within the state, including data of all available types (mortality, prevalence, hospitalization, emergency department visits, Medicaid and SCHIP enrollee data, and BRFSS adult history and child prevalence data). The report should include an analysis of the most recent year of data available from each data source mentioned above.

For more information, refer to the following citations in Attachment 1:

- ''Updated Guidelines for Evaluating Surveillance Systems, Recommendations from the Guidelines Working Group''
- ''Surveillance of Work-Related Asthma in Selected U.S. States Using Surveillance Guidelines for State Health Departments—California, Massachusetts, Michigan and New Jersey, 1993–1995''
- ''The Role of States in a Nationwide Comprehensive Surveillance System for Work-related Diseases, Injuries and Hazards''
- ''Minimum and Comprehensive State-Based Activities in Occupational Safety and Health''
- ''American Thoracic Society Statement: Occupational Contribution to the Burden of Airway Disease''

For more information on the BRFSS Asthma Call-Back Survey, see Attachment II.

3. State Asthma Plan

Submit a copy of the final, approved, comprehensive State Asthma Plan. Approval can be documented with a letter from the State's Health or Medical Director *and* a letter from key partners indicating their commitment to and approval of the asthma plan. These letters may be contained within the plan itself. If so, this should be indicated by applicant. Plans that are pending final approval may be accepted if the entire

draft plan is submitted and accompanied by letters from the State Health or Medical Director *and* key partners stating their commitment to and approval of the plan, a time frame for final approval, and a description of the plan's approval process status. The letters should assure that the State Asthma Plan will be completed within the first month of the year one budget period.

Describe the collaborative process by which the comprehensive State Asthma Plan was developed. Describe how the plan addresses all persons with asthma regardless of age, race/ethnicity (including Native Americans), gender, or geographic locale, and includes key environments in which persons with asthma spend significant time (*e.g.,* home, school, or workplace). If a specific population is not affected by asthma, clearly identify and describe this population.

Include information about the agencies and organizations that have participated in the planning process and describe their roles and responsibilities, and how they will be involved in implementing interventions.

Describe how data collected in the asthma surveillance system is used to identify priority areas and guide the development of program goals and objectives.

Describe a subset of interventions from the State Asthma Plan to be implemented with these grant funds. Also, briefly explain the remaining interventions in the State Asthma Plan that will not be conducted under this announcement due to limited funding.

Note that a statewide approach is encouraged. If focusing on one segment of the population, explain and justify the rationale for this approach.

Proposed activities to meet the plan's objectives may include, but are not limited to, efforts to:

- Expand surveillance for asthma.
- Improve provider compliance with the National Asthma Education and Prevention Program's (NAEPP) ''Guidelines for the Diagnosis and Management of Asthma'' (refer to citation in Attachment I for more information).
- Improve the skills of patients and families affected by asthma to manage the disease.
- Review legislation and policies impacting people with asthma.
- Identify environmental factors that contribute to asthma prevalence and morbidity, and reduce or eliminate exposure to these factors.
- Facilitate communication between those implementing and those affected by planned activities.

Explain how the State Asthma Plan will evolve and change based on analysis of surveillance data, evaluation of interventions, and other outside factors that affect the state support for asthma.

4. Collaboration Plan

Describe experiences with partnerships requiring extensive collaboration to address asthma, both within and outside the agency. Specifically, define the approach to be used to establish or further develop these relationships.

Document partnerships with the clinical community; local health agencies; physician organizations; community health centers; local, state, or regional asthma or respiratory health organizations (*e.g.,* American Lung Association); state or local education authorities; and groups or organizations that serve minority or other populations experiencing a disproportionate burden of asthma. Also, include representatives from state governmental agencies (*e.g.,* Department of Labor); federal agencies; public health agencies; and professional care organizations conducting or interested in work-related asthma activities. If one or more of these partners is not listed, the applicant should explain why.

Describe how the collaboration:

- Established leadership.
- Developed consensus regarding goals.
- Identified roles and responsibilities.
- Developed procedures and patterns for communication.
- Sustained the participation of members over time.

Provide letters of commitment from each specific organization, including a statement of how they do, or intend to, collaborate, as well as their expertise and capacity to carry out assigned responsibilities.

Describe how the partners who developed the State Asthma Plan will continue to work together to implement and monitor the intervention strategies and modify the plan over time. Expand partnership activities as appropriate.

5. Implementation Plan

Provide specific, realistic, measurable, and time-phased objectives for each of the interventions to be implemented over the three-year project period using resources of this announcement. If objectives and interventions from the plan are addressed using other resources, explain how they are related. While the overall State Asthma Plan must address all populations, interventions should be prioritized based on surveillance data, focusing on high priority and disparate populations first. Disparate populations include those communities that are experiencing worse than average health, or are medically underserved.

Interventions that change systems and individuals to provide improved disease management or education are preferred. This discussion might include the guidelines that the applicant will use for work-related asthma, such as ''Minimum and Comprehensive State-Based Activities in Occupational Safety Health,'' and/or ''The Role of States in a Nationwide Comprehensive Surveillance System for Work-related Diseases, Injuries and Hazards.'' Refer to citations in Attachment I for more information.

Include an assessment of existing and needed resources to implement these strategies.

Describe how implementation activities from the State Asthma Plan were selected by members of the statewide partnership group, and how they determined that these particular objectives and strategies would be addressed first. Demonstrate the extent to which the intervention plan is supported in the community by the inclusion of letters of support from key members of the community. Letters should describe their willingness to work together to implement and monitor the intervention strategies, and modify the plan over time.

Demonstrate the scientific basis for proposed interventions. If proposed interventions include case management programs, assure that patients enrolled are those with moderate to severe persistent asthma, and are receiving care consistent with the NAEPP ''Guidelines for the Diagnosis and Management of Asthma.'' Refer to citation in Attachment I for more information.

Provide the methodology and specific measures for monitoring progress in meeting all objectives related to implementation of activities in the asthma plan.

Provide measures for evaluating process, impact, and outcomes for each goal and objective. For more information, refer to the citation in Attachment I, ''Framework for Program Evaluation in Public Health,'' or other evaluation resources on the CDC Web site at *http://www.cdc.gov/eval/framework.htm.*

6. Workplan

Provide specific goals, objectives, and activities that describe what the state intends to accomplish by the end of the three-year project period. These goals, objectives and activities should be measurable, realistic, related to

Awardee Activities described in Section I of this funding opportunity announcement, and reflect activities in years one, two, and three of the project. Include a project time-line that indicates when the proposed goals, objectives, and activities will be completed. A single-spaced table format may be used for this.

Document how progress made toward meeting the objectives will be evaluated. Provide measures for evaluating process, impact, and outcome for each goal and objective. For more information, refer to the citation in Attachment I, ''Framework for Program Evaluation in Public Health,'' or other evaluation resources on the CDC Web site at *http://www.cdc.gov/eval/framework.htm.*

In addition, describe how lessons learned will be systematically gathered, documented, and included as an integral part of the evaluation process.

7. Management and Staffing

Demonstrate the applicant's organizational commitment to the asthma program by describing how the state as a whole will focus its efforts on asthma. Provide a plan to maintain a strong commitment within the state to support continued efforts of the asthma program.

Describe the organizational location of the proposed staff, their relation to the state asthma contact (the position currently responsible for contact with CDC on asthma issues), and the support within the organizational structure for the activities defined for the project staff. Attach an organizational chart for the unit where asthma activities will be located and, at a minimum, the next two levels above it.

Describe the qualifications and roles of trained public health professionals to serve as: at least the equivalent of one full-time asthma coordinator to manage the planning process and conduct other programmatic activities; at least the equivalent of one full-time epidemiologist to develop and implement surveillance activities for the asthma project; and a supervisor (paid with grant funds or in-kind contributions) who will assure support for the project staff. Other program positions may also be proposed. Attach an official position description, qualifications and curricula vitae for all proposed staff positions.

For each position, describe the primary roles and responsibilities for the project staff over the three-year project period. Also, include specific staff activities that will contribute to meeting each objective. Describe the level of involvement of the principal investigator.

Provide a plan to expedite filling of the staff position(s) within the first budget year and assure that they have been, or will be, approved by the applicant's personnel system. Include a letter of support from the state guaranteeing hiring of personnel and support for the asthma program. Also, describe positions in the asthma program that are currently filled, but will not be funded by resources under this cooperative agreement.

Assure that at least two key project staff will attend and participate in the conferences or grantee meetings convened by CDC, and their willingness to share innovations, information, data, and materials. This should be reflected in the budget.

8. Budget and Justification

Include a detailed first-year budget with narrative justifications, as well as annual budget projections for years two and three (budget and justification will not be counted toward the narrative page limit). The applicant should describe the program purpose for each budget item. For each contract contained within the budget, provide: (a) The name(s) of the contractor(s); (b) method of selection; (c) period of performance; (d) description of activities; (e) method of accountability; and (f) an itemized budget with narrative justifications.

The budget should include travel funds for at least two project staff to attend a yearly conference or grantee meeting convened by CDC.

If applicable, list other funds outside this cooperative agreement (*i.e.*, in-kind contributions) that will be used to support this program.

Additional information may be included in the application appendices. The appendices will not be counted toward the narrative page limit. This additional information includes: Curriculum Vitaes, Resumes, Organizational Charts, Position Descriptions, Letters of Support, the State Asthma Plan and supporting documentation, Surveillance Reports, etc.

You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the Federal government. 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 *www.dunandbradstreet.com* or call 1–866–705–5711.

For more information, see the CDC Web site at: *http://www.cdc.gov/od/pgo/funding/pubcommt.htm*. If your application form does not have a DUNS number field, please write your DUNS number at the top of the first page of your application, and/or include your DUNS number in your application cover letter.

Additional requirements that may require you to submit additional documentation with your application are listed in section ''VI.2. Administrative and National Policy Requirements.''

IV.3. Submission Dates and Times

Application Deadline Date: June 6, 2005.

Explanation of Deadlines: Applications must be received in the CDC Procurement and Grants Office by 4 p.m. Eastern Time on the deadline date.

You may submit your application electronically at *http://www.grants.gov*. Applications completed online through Grants.gov are considered formally submitted when the applicant organization's Authorizing Official electronically submits the application to *http://www.grants.gov.* Electronic applications will be considered as having met the deadline if the application has been submitted electronically by the applicant organization's Authorizing Official to Grants.gov on or before the deadline date and time.

If you submit your application electronically with Grants.gov, your application will be electronically time/date stamped, which will serve as receipt of submission. You will receive an e-mail notice of receipt when CDC receives the application.

If you submit 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 CDC receives your application after closing due to: (1) Carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, you will be given the opportunity to submit documentation of the carrier's guarantee. If the documentation verifies a carrier problem, CDC will consider the application as having been received by the deadline.

If you submit a hard copy application, CDC will not notify you upon receipt of your submission. If you have a question about the receipt of your LOI or application, first contact your courier. If

you still have a question, contact the PGO–TIM staff at 770–488–2700. Before calling, please wait two to three days after the application deadline. This will allow time for applications to be processed and logged.

This announcement is the definitive guide on application content, submission address, and deadline. It supersedes information provided in the application instructions. If your submission does not meet the deadline above, it will not be eligible for review, and will be discarded. You will be notified that you did not meet the submission requirements.

IV.4. Intergovernmental Review of Applications

Your application is subject to Intergovernmental Review of Federal Programs, as governed by Executive Order (EO) 12372. This order sets up a system for state and local governmental review of proposed federal assistance applications. You should contact your state single point of contact (SPOC) as early as possible to alert the SPOC to prospective applications, and to receive instructions on your state's process. Click on the following link to get the current SPOC list: *http://www.whitehouse.gov/omb/grants/spoc.html.*

IV.5. Funding Restrictions

Restrictions, which must be taken into account while writing your budget, are as follows:

- Funds may not be used to conduct research. Surveillance and evaluation activities that are for the purposes of monitoring program performance are not considered research. However, any identifiable information collected must be kept confidential.
- Cooperative agreement funds may be used to support costs that are directly related to the program activities, and are consistent with the scope of the cooperative agreement.
- Awards will allow reimbursement of pre-award costs.
- Funds awarded under this program announcement may not be used for screening or registry activities.
- Federal funds awarded under this program announcement may not be used to supplant state or local funds.
- Grant funds may be used to leverage asthma program development in the state, along with resources from other collaborative agencies and organizations.

If you are requesting indirect costs in your budget, you must include a copy of your indirect cost rate agreement.

If your indirect cost rate is a provisional rate, the agreement must be less than 12 months old.

Guidance for completing your budget can be found on the CDC Web site, at the following Internet address: *http://www.cdc.gov/od/pgo/funding/budgetguide.htm.*

IV.6. Other Submission Requirements

Application Submission Address: CDC strongly encourages applicants to submit electronically at: *http://www.grants.gov.* You will be able to download a copy of the application package from *http://www.grants.gov,* complete it offline, and then upload and submit the application via the Grants.gov site. E-mail submissions will not be accepted. If you are having technical difficulties in Grants.gov, they can be reached by e-mail at *http://www.support@grants.gov* or by phone at 1–800–518–4726 (1–800–GRANTS). The Customer Support Center is open from 7 a.m. to 9 p.m., Monday through Friday.

CDC recommends that you submit your application to Grants.gov early enough to resolve any unanticipated difficulties prior to deadline. You may also submit a back-up paper submission of your application. Any such paper submission must be received in accordance with the requirements for timely submission detailed in Section IV.3. of the grant announcement. The paper submission must be clearly marked: ''BACK-UP FOR ELECTRONIC SUBMISSION.''

The paper submission must conform to all requirements for electronic submissions. If both electronic and back-up paper submissions are received by the deadline, the electronic version will be considered the official submission.

It is strongly recommended that you submit your grant application using Microsoft Office products (*i.e.*, Microsoft Word, Microsoft Excel, etc.). If you do not have access to Microsoft Office products, you may submit a PDF file. Directions for creating PDF files can be found on the Grants.gov web site. Use of file formats other than Microsoft Office or PDF may result in your file being unreadable by our staff. Or

Submit the original and two hard copies of your application by mail or delivery service to: Technical Information Management-PA # 05044, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341.

V. Application Review Information

V.1. Criteria

Applicants are required to provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures of effectiveness must relate to the performance goals stated in the ''Purpose'' section of this program announcement. Measures must be objective and quantitative, and must measure the intended outcome. These measures of effectiveness must be submitted with the application and will be an element of evaluation.

Your application will be evaluated by the extent to which you demonstrate evidence for the following criteria. Criteria are listed according to their point value; you do not have to address them in this order. Points in parentheses reflect the number of possible points for that section. The total number of points for the entire application is 100.

1. Workplan (20 Points)

Does applicant identify goals, objectives, and activities that:

- Are consistent with surveillance findings and the Awardee Activities described in Section I of this Program Announcement?
- Are specific, measurable, and realistic?
- Reflect activities in years one, two, and three of the project period?

Are the activities likely to achieve objectives, and are the objectives likely to contribute to accomplishment of identified goals?

Is the time-line for accomplishing proposed goals, objectives, and activities reasonable?

Are measures for monitoring and evaluating the process, impact, and outcome of each goal and objective specific and appropriate?

Is the plan to systematically gather and document lessons learned incorporated into the program evaluation process?

2. Surveillance Plan (20 Points)

Does the applicant demonstrate an operational surveillance system for asthma as evidenced by a description of existing data sources, the timeliness of the data available and any limitations? Does the plan use appropriate measures to track the following over time:

- Asthma hospitalizations?
- Asthma morbidity (measures from the BRFSS or equivalent)?
- Asthma mortality?
- Work-related asthma?

Are Medicaid and SCHIP data included, if available?

Does the applicant explain how the state will enhance an on-going surveillance system by describing:

- Future plans for analyzing the data currently available?
- Additional data the state will obtain and the methods for obtaining it?
- Plans for the identification of demographic groups at high risk for poor asthma health outcomes?
- How the existing surveillance system will be enhanced by additional data sets and/or additional analyses of existing data?
- How the data will be used to support policy and program development, implementation and evaluation?

Are surveillance data analyses, interpretation and dissemination methods described and are they appropriate? Is the utility of existing data for time trends analysis discussed and is it reasonable?

Does the plan clearly state applicant's intent, within the first year of the project period and in subsequent years, to implement:

- The BRFSS optional six-question child selection module?
- The BRFSS optional two-question child asthma module?
- The BRFSS optional ten question adult module; or

The BRFSS Asthma call-back survey?

Are letters of support from the BRFSS coordinator and other programs using the child selection module (if any) included? If another method (other than BRFSS) will be used, or if the applicant is unable to implement the recommended BRFSS modules, is a detailed and reasonable justification provided?

Are the attached surveillance reports comprehensive and timely (data from the most recently available year are used)? Is the burden of asthma within the state fully described, including: mortality; BRFSS prevalence; BRFSS adult history and child prevalence data; and, if available, hospitalization, emergency department, Medicaid and SCHIP enrollee data?

Does the surveillance report clearly identify segments of the population, such as specific age groups, ethnic/racial groups, socio-economic groups, or those residing in particular geographic regions, at disparate risk for asthma and asthma outcomes in each data source?

3. State Asthma Plan (15 Points)

Is the State Asthma Plan comprehensive? Has it been approved by the state and key partners? If not already approved, has the applicant provided assurance that the State Asthma Plan will be completed within one month of the first budget year?

Does the plan address all persons with asthma, regardless of gender, age, race/ethnicity, or geographic location? Are key environments in which persons with asthma spend significant time (*e.g.*, home, school, or workplace) addressed?

Are the number and type of agencies and organizations that participated in developing the State Asthma Plan appropriate? Are partner's roles and responsibilities fully described and reasonable?

Does the applicant describe the collaboration's progress towards:

- Establishing leadership?
- Developing a consensus regarding goals?
- Identifying roles and responsibilities through a negotiated process?
- Developing routine and consistent patterns of communications?
- Sustaining the participation of members over time?

Will collaborative relationships be used after the plan is in place and the state begins to implement selected interventions?

Are a subset of the interventions to be implemented from the State Asthma Plan with grant funds described? Do proposed activities to meet the plan's objectives include, at a minimum, efforts to:

- Expand surveillance for asthma?
- Improve provider compliance with the NAEPP "Guidelines for the Diagnosis and Management of Asthma?
- Improve the skills of patients and families affected by asthma to manage the disease?
- Review legislation and policies impacting people with asthma?
- Identify environmental factors that contribute to asthma prevalence and morbidity, and reduce or eliminate exposure to these factors?
- Facilitate communication between those implementing and those affected by planned activities?

Was asthma data collected by the surveillance system used to identify priority areas and guide the development of program goals and objectives? Are future plans to do this described?

Does applicant describe how the State Asthma Plan will evolve over time, and the process by which changes will be made?

4. Collaboration Plan (15 Points)

Does applicant demonstrate previous successful experiences collaborating with internal and external partners to address asthma?

Do collaborating organizations and agencies represent a wide variety of appropriate partners in the clinical community; local health agencies; physician organizations; community health centers; local, state or regional asthma or respiratory health organizations (such as the American Lung Association); local or state education authorities; and groups or organizations that serve populations experiencing a disproportionate burden of asthma? Are representatives from state governmental agencies (*e.g.,* Department of Labor), federal agencies, public health agencies, and professional care organizations conducting or interested in work-related asthma activities included? If one or more of these partners is not included, does the applicant explain why?

Does the applicant describe satisfactory progress by the collaboration around:

- Establishing leadership?
- Developing a consensus regarding goals?
- Identifying roles and responsibilities through a negotiated process?
- Developing routine and consistent procedures and patterns of communications?
- Sustaining the participation of members over time?

Does applicant describe how progress is monitored?

Do letters of commitment from key organizations demonstrate their willingness, expertise, and specific capacity to carry out assigned responsibilities?

Does applicant realistically describe how partners who developed the State Asthma Plan will continue to work together to monitor the intervention strategies over time?

How likely is it that the plan for evaluating the effectiveness of collaborations will be implemented, and that measures to assess effectiveness will be reasonable and identify areas for improvement?

5. Management and Staffing Plan (15 Points)

Does the state demonstrate a high level of commitment and organizational support for the asthma program? Are organizational charts included, showing where the asthma program is located?

Are roles of proposed staff members adequately defined and appropriate for carrying out stated responsibilities? Is the proposed level of involvement of the principal investigator adequate?

Does the staffing plan include at least the equivalent of one full-time asthma coordinator, at least the equivalent of one full-time epidemiologist, and a supervisor?

Do job descriptions, qualifications, and curricula vitae indicate that each proposed staff member has the credentials, knowledge, training, and experience to perform assigned duties?

Is the plan to expedite filling of the staff position(s) and assure that they will be approved by the applicant's personnel system, realistic?

Does the applicant commit to having at least two key project staff attend CDC conferences and meetings, to share innovations, information, data, and materials?

6. Implementation Plan (10 Points)

Does the applicant present specific, realistic, measurable and time-phased objectives for each intervention proposed, along with appropriate measures to evaluate process, impact and outcomes?

Do proposed interventions focus on high priority and disparate populations, with priorities based on surveillance data?

Are interventions focused on bringing about change at both the systems level and the individual level to provide improved disease management and education?

Is the intervention plan supported in the community, as demonstrated by the inclusion of letters of support from key members of the community?

Does the applicant demonstrate a scientific basis for each proposed intervention?

Does the applicant demonstrate the availability of sufficient resources to implement the proposed subset of interventions?

Are the methods and measures for monitoring progress towards meeting intervention goals and objectives appropriate?

7. Description of the Problem (5 Points)

Does the applicant provide a comprehensive description of what is known about the asthma burden in the state, including all ages, race/ethnic groups, and geographic areas?

Does the applicant fully identify existing initiatives, capacity, and infrastructure of the state within which the asthma programs will occur?

Were barriers identified when developing the State Asthma Plan appropriately addressed?

Is the state's commitment to addressing asthma demonstrated by accomplishments to date and understanding of the problem?

8. Budget (Reviewed, But Not Scored)

The budget is comprehensive and includes details for year one, and projections for years two and three, of the project period.

The budget contains justifications that are consistent with stated goals, objectives, activities, and the intended use of cooperative agreement funds.

The budget is reasonable and includes funds for at least two project staff to attend a yearly conference or grantee meeting convened by CDC.

9. Performance Goals (Reviewed, But Not Scored)

The extent to which the applicant will reduce the number of deaths, hospitalizations, emergency department visits, school or work days missed, and limitations on activity due to asthma in the state.

V.2. Review and Selection Process

Applications will be reviewed for completeness by the Procurement and Grants Office (PGO) staff, and for responsiveness by National Center of Environmental Health (NCEH). Incomplete applications and applications that are non-responsive to the eligibility criteria will not advance through the review process. Applicants will be notified that their application did not meet submission requirements.

An objective review panel will evaluate your application according to the criteria listed in the ''V.1. Criteria'' section above. All members of the panel will be CDC employees from outside of the funding center (NCEH).

In addition, the following factors may affect the funding decision: (1) Geographic distribution; and (2) racial and ethnic populations with a disproportionate asthma burden. CDC will provide justification for any decision to fund out of rank order.

V.3. Anticipated Announcement Award Dates

August 31, 2005.

VI. Award Administration Information

VI.1. Award Notices

Successful applicants will receive a Notice of Award (NoA) from the CDC Procurement and Grants Office. The NoA shall be the only binding, authorizing document between the recipient and CDC. The NoA will be signed by an authorized Grants Management Officer, and mailed to the recipient fiscal officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review by mail.

VI.2. Administrative and National Policy Requirements

45 CFR Part 74 or Part 92

For more information on the Code of Federal Regulations, see the National Archives and Records Administration at the following Internet address: *http://www.access.gpo.gov/nara/cfr/cfr-table-search.html.*

The following additional requirements apply to this project:

- AR–7 Executive Order 12372
- AR–8 Public Health System Reporting Requirements
- AR–10 Smoke-Free Workplace Requirements
- AR–11 Healthy People 2010
- AR–12 Lobbying Restrictions
- AR–21 Small, Minority, and Women-Owned Business

Additional information on these requirements can be found on the CDC Web site at the following Internet address: *http://www.cdc.gov/od/pgo/funding/ARs.htm.*

An additional Certifications form from the PHS5161–1 applications needs to be included in your Grants.gov electronic submission only. Refer to *http://www.cdc.gov/od/pgo/funding/PHS5161–1Certificates.pdf.* Once the form is filled out, attach it to your Grants.gov submission as Other Attachment Forms.

VI.3. Reporting Requirements

You must provide CDC with an original, plus two hard copies of the following reports:

1. Interim progress report, no less than 90 days before the end of the budget period. The progress report will serve as your non-competing continuation application, and must contain the following elements:

a. Current Budget Period Activities Objectives.

b. Current Budget Period Financial Progress.

c. New Budget Period Program Proposed Activity Objectives.

d. Detailed Line-Item Budget and Justification.

e. Additional Requested Information.

f. Measures of Effectiveness.

2. Financial status report and annual progress report, no more than 90 days after the end of the budget period.

3. Final financial and performance reports, no more than 90 days after the end of the project period.

These reports must be sent to the Grants Management Officer listed in the ''Agency Contacts'' section of this announcement.

VII. Agency Contacts

For general questions about this announcement, contact: Technical Information Management Section, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341, Telephone: 770–488–2700.

For program technical assistance, contact: Michele Mercier, Project

Officer, Air Pollution and Respiratory Health Branch, Division of Environmental Hazards and Health Effects, National Center for Environmental Health, Centers for Disease Control and Prevention, 1600 Clifton Road, NE, Mailstop E–17, Atlanta, GA 30333, Telephone: 404–498–1033, E-mail: *mmercier@cdc.gov.*

For financial, grants management, or budget assistance, contact: Gary Teague, Grants Management Specialist, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341, Telephone: 770–488–1981, E-mail: *GTeague@cdc.gov.*

VIII. Other Information

This and other CDC funding opportunity announcements can be found on the CDC Web site, Internet address: *http://www.cdc.gov.* Click on ''Funding'' then ''Grants and Cooperative Agreements.''

For additional reference materials, please see Attachments I and II.

Dated: April 14, 2005.

William P. Nichols,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

Attachment I—References

''National Asthma Training Curriculum'' CD–ROM educational resource, CDC National Center for Environmental Health and the Academy of Allergy, Asthma and Immunology, August 2004.

''Potentially Effective Interventions for Asthma'' *http://www.cdc.gov/asthma/interventions.htm.*

Boss, L.; Kreutzer, R.; Luttinger, D.; Leighton, J.; Wilcox, K.; and Redd, S. ''The Public Health Surveillance of Asthma,'' Journal of Asthma, 38(1), 83–89, 2001.

''Framework for Program Evaluation in Public Health,'' Morbidity and Mortality Weekly Report, September 17, 1999/48(RR–11); 1–40 at *http://www.cdc.gov/mmwr/preview/mmwrhtml/rr4811a1.htm* or *http://www.cdc.gov/eval/framework.htm.*

''Surveillance of Work-Related Asthma in Selected U.S. States Using Surveillance Guidelines for State Health Departments—California, Massachusetts, Michigan and New Jersey, 1993–1995,'' Morbidity and Mortality Weekly Report, June 25, 1999/48 (SS03); 1–20 at *http://www.cdc.gov/mmwr/preview/mmwrhtml/ss4803a1.htm.*

''The Role of States in a Nationwide Comprehensive Surveillance System for Work-related Diseases, Injuries and Hazards'' at *http://www.cste.org/occupationalhealth.htm.*

''Minimum and Comprehensive State-Based Activities in Occupational Safety and Health,'' June 1995—DHHS (NIOSH) Publication No. 95–107 at *http://www.cdc.gov/niosh/95–107.html.*

''American Thoracic Society: Occupational Contribution to the Burden of Airway Disease,'' American Journal of Respiratory and Critical Care Medicine, 167:787–797, 2003.

''Updated Guidelines for Evaluating Surveillance Systems, Recommendations from the Guidelines Working Group,'' Morbidity and Mortality Weekly Report, July 27, 2001/(50)RR–13; 1–35 at *http://www.cdc.gov/mmwr/preview/mmwrhtml/rr5013a1.htm.*

Madden, J; Boss, L; Kownaski, M; Lambright, L; Lee, C; Luttinger, D; Recer, G; Wedemeyer, C. ''Guide for State Health Agencies in the Development of Asthma Programs.'' Atlanta, Georgia: U.S. Centers for Disease Control and Prevention, 2003.

''Guidelines for the Diagnosis and Management of Asthma,'' (Clinical Practice Guidelines, Guidelines for the Diagnosis and Management of Asthma. National Institutes of Health (NIH), National Heart, Lung and Blood Institute. NIH publication No. 97–4051, April 1997) at *http://www.nhlbi.nih.gov/guidelines/asthma/asthgdln.htm.*

''Key Clinical Activities for Quality Asthma Care: Recommendations of the National Asthma Education and Prevention Program.'' MMWR March 28, 2003; 52(RR06):1–84.

Strategies for addressing asthma in school settings: *http://www.cdc.gov/HealthyYouth/asthma/.*

Attachment II—BRFSS Asthma Call-Back Survey

The National Asthma Survey (NAS) is a comprehensive state/city level detailed asthma survey. It is administered by phone and includes respondents of all ages. Previously the NAS was linked to the National Immunization Survey (NIS) through the State and Local Area Integrated Telephone Survey (SLAITS) mechanism. SLAITS is a function of the National Center for Health Statistics. A full questionnaire for that survey can be viewed on the SLAITS Web site. *http://www.cdc.gov/nchs/about/major/slaits/nsa.htm.*

The initial NAS field test occurred in 2002 in Alabama, California, Illinois and Texas. This first field test did not achieve an adequate response rate level. Consequently additional field tests were implemented to determine whether procedural changes could improve the response rate. In 2003, the NAS was conducted as a field test in the same four states and also in a national sample.

There were four arms in the 2003 field test. The national sample and the state sample were the two main arms. The national sample obtains demographic information about respondents who do not have asthma in order to estimate prevalence rates. The four-state sample only solicited information from households that had a member with asthma and, consequently, prevalence rates cannot be determined. Results from comparing the four state results with the first field test will determine if obtaining prevalence rates resulted in a significantly lower response rate. Comparing the national sample with the first field test in the four states will determine if the four selected states were particularly difficult with respect to response rates as was suggested from the results from other surveys.

Each of the two main arms was also divided into a NIS-connected sample and a sample independent of the NIS procedures. Comparisons between these two secondary arms within each primary arm will determine if restrictions related to the NIS survey procedures were detrimental to the NAS response rate. In addition, several other modifications were made to simplify the selection of a single respondent from the household members.

During 2004 the data obtained were weighted and scrutinized to determine the best combination of methodological changes to ensure that quality data result from further implementation of the National Asthma Survey.

In 2005 the NAS will be implemented as a call-back survey in conjunction with the Behavioral Risk Factor Surveillance System (BRFSS) in three test states (Michigan, Minnesota and Oregon). The child selection module and the child prevalence module must be conducted at the time of the BRFSS interview. Adults and children who are identified with lifetime asthma will be called back approximately 2 weeks after the initial BRFSS telephone interview. At the time of the call-back the NAS interview will be conducted. Draft questionnaires can be obtained by contacting the Air Pollution and Respiratory Health Branch (404–498–1000). Prevalence figures for adults in all BRFSS areas (50 states, DC and 3 territories) can be obtained from the core BRFSS survey. However, the child selection module and child prevalence modules are needed for state level child prevalence estimates from BRFSS.

In 2006 funding to implement the BRFSS asthma call-back survey will be provided to BRFSS states, DC, or territories who successfully apply for that funding in conjunction with their BRFSS funding. Asthma program staff must work jointly with their state's BRFSS program coordinator when submitting request for asthma call-back funding to the National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP).

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Health Education Enhancement Program

Announcement Type: Competing Continuation.

Funding Opportunity Number: RFA 05072.

Catalog of Federal Domestic Assistance Number: 93.283.

Letter of Intent Deadline: May 4, 2005.

Application Deadline: June 20, 2005.

Executive Summary: The purpose of the program is to strengthen the nation's capacity to carry out public health

activities in the area of asthma education. More specifically, the objective is to provide appropriate resources for health education of patients and others impacted by asthma.

I. Funding Opportunity Description

Authority: This program is authorized under Sections 301 and 317 of the Public Health Service Act, (42 U.S.C. 241 and 247b), as amended.

Background: Although there are many asthma educational materials which have been produced and disseminated, there remain gaps in the availability and dissemination of materials which are targeted to adults, the elderly, rural populations, non-English speaking populations, adolescents, and other underserved and disparately impacted populations.

Purpose: The purpose of the program is to strengthen the nation's capacity to carry out public health activities in the area of asthma education. The objectives are to: (1) Review and disseminate currently available asthma educational materials to reach community members on a community, local and national level; and (2) modify existing, scientifically-proven-effective asthma educational materials to make them culturally and linguistically competent for targeted populations, and disseminate these materials on a national level to families impacted by asthma, particularly working with underserved and disparately impacted populations. This program addresses the ''Healthy People 2010'' focus area(s) of reducing asthma hospitalizations, deaths, and improving quality of life.

Measurable outcomes of the program will be in alignment with one (or more) of the following performance goal(s) for the National Center for Environmental Health (NCEH): To reduce the number of asthma hospitalizations, deaths, and emergency department visits.

This announcement is only for non-research activities supported by CDC. If research is proposed, the application will not be reviewed. For the definition of research, please see the CDC Web site at the following Internet address: *http://www.cdc.gov/od/ads/opspoll1.htm.*

Activities: Awardee activities for this program are as follows:

- Review and disseminate currently available asthma educational materials to reach applicant organization members and other community members on a national, local, and community level. The materials must be proven effective, and in accordance with sound asthma management practices and appropriate National Asthma Education and Prevention Program (NAEPP) Guidelines.
- In cases where appropriate, asthma educational materials do not exist for populations which are underserved and a need for such materials is identified, applicants should adapt or modify existing educational materials which have been scientifically proven effective, through appropriate, published research results. Resulting materials must be accurate, user-friendly, culturally and linguistically appropriate, and be used to educate the applicant organization's members and other members of the community, or any targeted group for which a gap in currently available educational materials is identified. Literacy level and appropriate demographics of your target audience must be considered.
- Conduct interactive community outreach education at the local level, aimed at your members and community members affected by asthma.

Present a plan by which you will measure the effectiveness of your proposed activities.

Collaborate with partners, including CDC and appropriate asthma education organizations, to ensure that best practices are used in the adaptation/modification and dissemination of asthma education materials for your target audiences.

In a cooperative agreement, CDC staff is substantially involved in the program activities, above and beyond routine grant monitoring.

CDC Activities for this program are as follows:

- Collaborate with recipients in the modification and adaptation of existing educational materials which have been scientifically proven effective through appropriate published research results. Ensure coordination of this activity among all recipients and facilitate information sharing.
- Review recipients' identification of currently available educational materials and gap analysis; and ensure coordination of this activity among all recipients, including information sharing and elimination of duplication of efforts among recipients.
- Facilitate and coordinate meetings to bring together national groups as collaborators, where appropriate.
- Collaborate with recipients on the development of an appropriate evaluation plan which measures the effectiveness of recipient activities involved in each step indicated, and approve the plan.
- Coordinate recipient activities with asthma education partners to ensure duplication of activities and efforts does not occur.

II. Award Information

Type of Award: Cooperative Agreement. CDC involvement in this program is listed in the Activities Section above.

Fiscal Year Funds: 2005.

Approximate Total Funding: $225,000 to $300,000. (This amount is an estimate, and is subject to availability of funds.)

Approximate Number of Awards: Three.

Approximate Average Award: $75,000 to 100,000. (This amount is for the first 12-month budget period, and includes both direct and indirect costs.)

Floor of Award Range: None.

Ceiling of Award Range: $100,000. (This ceiling is for the first 12-month budget period.)

Anticipated Award Date: August 31, 2005.

Budget Period Length: 12 months.

Project Period Length: 5 years.

Throughout the project period, CDC's commitment to continuation of awards will be conditioned on the availability of funds, evidence of satisfactory progress by the recipient (as documented in required reports), and the determination that continued funding is in the best interest of the Federal Government.

III. Eligibility Information

III.1. Eligible Applicants

Applications may be submitted by public and private nonprofit organizations such as:

- Public nonprofit organizations.
- Private nonprofit organizations.
- Community-based organizations.
- Faith-based organizations.

Assistance will be provided only to applicants that are well-established, national, non-profit organizations with experience in the development and dissemination of asthma educational materials; and whose membership includes families of adults or children with asthma, or others affected by the disease.

The justification for the foregoing limitation is the need for the applicant to have immediate access to a national audience, and existing expertise in the modification and dissemination of asthma educational materials to community members impacted by asthma, to insure they may access the greatest number of people in the shortest period of time.

To be eligible, applicants must:

1. Demonstrate that your organization's mission is explicitly committed to improving the lives of families impacted by asthma, or other similar lung diseases, through the

provision of timely, accurate, and useful information about the disease and how it can be controlled. You must have experience providing asthma education to a nationwide audience. The foregoing may be demonstrated by submission of your charter, articles of incorporation, or other governing documents.

2. Demonstrate that your organization is non-profit and recognized as tax-exempt under Section 501(c)(3) of the Internal Revenue Code. This may be demonstrated through inclusion of your Internal Revenue Service determination letter.

3. Demonstrate that your organization has the capacity for and experience in providing educational services to families with asthma on a nationwide basis. This may be demonstrated through letters of support.

4. Demonstrate that your organization has the capacity for and experience providing educational services to families or a national network of local organizations. This may be demonstrated through a letter from your organization's leadership, which describes your national network/membership (number of members and national coverage of the membership).

III.2. Cost Sharing or Matching

Matching funds are not required for this program.

III.3. Other

If you request a funding amount greater than the ceiling of the award range, your application will be considered non-responsive, and will not be entered into the review process. You will be notified that your application did not meet the submission requirements.

Special Requirements: If your application is incomplete or non-responsive to the special requirements listed in this section, it will not be entered into the review process. You will be notified that your application did not meet submission requirements.

- Late applications will be considered non-responsive. See section ''IV.3. Submission Dates and Times'' for more information on deadlines.

- **Note:** Title 2 of the United States Code Section 1611 states that an organization described in Section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, or loan.

IV. Application and Submission Information

IV.1. Address To Request Application Package

To apply for this funding opportunity use application form PHS 5161–1.

CDC strongly encourages you to submit your application electronically by utilizing the forms and instructions posted for this announcement at *http://www.grants.gov*.

Application forms and instructions are available on the CDC Web site, at the following Internet address: *http://www.cdc.gov/od/pgo/forminfo.htm*.

If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, you may contact the CDC Procurement and Grants Office Technical Information Management Section (PGO–TIM) staff at: 770–488–2700. Application forms can be mailed to you.

IV.2. Content and Form of Submission

Letter of Intent (LOI): Your LOI must be written in the following format:

- Maximum number of pages: One.
- Font size: 12-point unreduced.
- Single spaced.
- Paper size: 8.5 by 11 inches.
- Page margin size: One inch.
- Printed only on one side of page.
- Written in plain language, avoid jargon.

Your LOI must contain the following information:

- Name and address of organization.
- Name, address, telephone number, fax number and e-mail address of the organization's primary contact for writing and submitting the application.
- A brief summary of the proposed project.

Application: You must submit a project narrative with your application forms. The narrative must be submitted in the following format:

- Maximum number of pages: 25 pages (not including attachments for purposes of establishing eligibility). If your narrative exceeds the page limit, only the first pages which are within the page limit will be reviewed.
- Font size: 12 point unreduced.
- Double spaced.
- Paper size: 8.5 by 11 inches.
- Page margin size: One inch.
- Printed only on one side of page.
- Pages shall be numbered sequentially, including your narrative and any appendices.
- Held together only by rubber bands or metal clips; not bound in any other way.

Your narrative should address activities to be conducted over the entire project period, and must include the following items in the order listed:

- History and Experience.
- Proposed Program.
- Evaluation Plan.
- Facilities, Staff and Resources.
- Budget and Justification.
- Documentation of eligibility, as follows:

a. Submit your charter, articles of incorporation, or other governing documents to demonstrate your organization's mission is explicitly committed to improving the lives of families impacted by asthma, or other similar lung diseases, through the provision of timely, accurate, and useful information about the disease and how it can be controlled.

b. Submit your Internal Revenue Service determination letter which will demonstrate your organization is non-profit and recognized as tax-exempt under Section 501(c)(3) of the Internal Revenue Code.

c. Submit letters of support, which will demonstrate that your organization has the capacity for and experience in providing educational services to families with asthma on a nationwide basis.

d. Submit a letter from your organization's leadership, which describes your national network/membership (number of members and national coverage of the membership).

The budget justification and documentation to establish eligibility will NOT be counted in the stated page limit.

Additional information may be included in the application appendices. The appendices will not be counted toward the narrative page limit. This additional information includes:

- Curriculum Vitae (of key staff positions).
- Letters of Support.

You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the Federal government. 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.dunandbradstreet.com* or call 1–866–705–5711.

For more information, see the CDC Web site at: *http://www.cdc.gov/od/pgo/funding/pubcommt.htm*.

If your application form does not have a DUNS number field, please write your DUNS number at the top of the first page of your application, and/or include your DUNS number in your application cover letter.

Additional requirements that may require you to submit additional

documentation with your application are listed in section ''VI.2. Administrative and National Policy Requirements.''

IV.3. Submission Dates and Times

LOI Deadline Date: May 4, 2005.

CDC requests that you send a LOI if you intend to apply for this program. Although the LOI is not required, not binding, and does not enter into the review of your subsequent application, the LOI will be used to gauge the level of interest in this program, and to allow CDC to plan the application review.

Application Deadline Date: June 20, 2005.

Explanation of Deadlines: Applications must be received in the CDC Procurement and Grants Office by 4 p.m. eastern time on the deadline date.

You may submit your application electronically at *http://www.grants.gov*. Applications completed online through Grants.gov are considered formally submitted when the applicant organization's Authorizing Official electronically submits the application to *http://www.grants.gov*. Electronic applications will be considered as having met the deadline if the application has been submitted electronically by the applicant organization's Authorizing Official to Grants.gov on or before the deadline date and time.

If you submit your application electronically with Grants.gov, your application will be electronically time/date stamped, which will serve as receipt of submission. You will receive an e-mail notice of receipt when CDC receives the application.

If you submit your application by the United States Postal Service or commercial delivery service, you must ensure that the carrier will be able to guarantee delivery by the closing date and time. If CDC receives your submission after closing due to: (1) Carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, you will be given the opportunity to submit documentation of the carriers guarantee. If the documentation verifies a carrier problem, CDC will consider the submission as having been received by the deadline.

If you submit a hard copy application, CDC will not notify you upon receipt of your submission. If you have a question about the receipt of your LOI or application, first contact your courier. If you still have a question, contact the PGO–TIM staff at: 770–488–2700. Before calling, please wait two to three days after the submission deadline. This will allow time for submissions to be processed and logged.

This announcement is the definitive guide on LOI and application content, submission address, and deadline. It supersedes information provided in the application instructions. If your submission does not meet the deadline above, it will not be eligible for review, and will be discarded. You will be notified that you did not meet the submission requirements.

IV.4. Intergovernmental Review of Applications

Your application is subject to Intergovernmental Review of Federal Programs, as governed by Executive Order (EO) 12372. This order sets up a system for state and local governmental review of proposed federal assistance applications. You should contact your state single point of contact (SPOC) as early as possible to alert the SPOC to prospective applications, and to receive instructions on your state's process. Click on the following link to get the current SPOC list: *http://www.whitehouse.gov/omb/grants/spoc.html.*

IV.5. Funding Restrictions

Restrictions, which must be taken into account while writing your budget, are as follows:

- Funds may not be used for research.
- Reimbursement of pre-award costs is not allowed.

If you are requesting indirect costs in your budget, you must include a copy of your federally approved indirect cost rate agreement. If your indirect cost rate is a provisional rate, the agreement should be less than 12 months of age.

Guidance for completing your budget can be found on the CDC Web site, at the following Internet address: *http://www.cdc.gov/od/pgo/funding/budgetguide.htm.*

IV.6. Other Submission Requirements

LOI Submission Address: Submit your LOI by express mail, delivery service, fax, or e-mail to: Sheri Disler, Centers for Disease Control and Prevention, National Center for Environmental Health, 1600 Clifton Road, MS E–17, Atlanta, GA 30303; telephone: 404–498–1018, Facsimile: 404–498–1088, e-mail address: *SDisler@cdc.gov.*

Application Submission Address: CDC strongly encourages applicants to submit electronically at: *http://www.grants.gov.* You will be able to download a copy of the application package from *http://www.grants.gov,* complete it offline, and then upload and submit the application via the Grants.gov site. E-mail submissions will not be accepted. If you are having technical difficulties in Grants.gov, they can be reached by e-mail at *http://www.support@grants.gov* or by phone at 1–800–518–4726. The Customer Support Center is open from 7 a.m. to 9 p.m. eastern time, Monday through Friday.

CDC recommends that you submit your application to Grants.gov early enough to resolve any unanticipated difficulties prior to the deadline. You may also submit a back-up paper submission of your application. Any such paper submission must be received in accordance with the requirements for timely submission detailed in Section IV.3. of the grant announcement. The paper submission must be clearly marked: ''BACK-UP FOR ELECTRONIC SUBMISSION.''

The paper submission must conform to all requirements for non-electronic submissions. If both electronic and back-up paper submissions are received by the deadline, the electronic version will be considered the official submission.

It is strongly recommended that you submit your grant application using Microsoft Office products (*e.g.*, Microsoft Word, Microsoft Excel, etc.). If you do not have access to Microsoft Office products, you may submit a PDF file. Directions for creating PDF files can be found on the Grants.gov Web site. Use of file formats other than Microsoft Office or PDF may result in your file being unreadable by our staff.

Or

Submit the original and two hard copies of your application by mail or express delivery service to: Technical Information Management—RFA 05072, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341.

V. Application Review Information

V.1. Criteria

Applicants are required to provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures of effectiveness must relate to the performance goals stated in the ''Purpose'' section of this announcement. Measures must be objective and quantitative, and must measure the intended outcome. These measures of effectiveness must be submitted with the application and will be an element of evaluation.

Your application will be evaluated against the following criteria:

1. History and Experience (30 Points)

The extent to which the proposal clearly demonstrates the applicant's solid reputation and history of serving families affected by asthma. The proposal should demonstrate that the applicant has a broad range of knowledge and expertise in the field of asthma, as well as significant years of experience in the dissemination and application of this knowledge and expertise. The proposal should also demonstrate that the applicant's membership is comprised of families affected by asthma, and that this membership is national in scope.

2. Proposed Program (30 Points)

The extent to which the proposal clearly demonstrates the applicant's understanding of the issues surrounding asthma and asthma education activities, and addresses gaps in the current state of asthma educational materials and activities. The proposal should demonstrate that the applicant has a clear understanding of the gaps and needs, and has a clear plan of activities, which will address these gaps. The applicant must demonstrate that their educational materials are in adherence to the NAEPP guidelines and, when these guidelines are updated, that materials are appropriately updated.

3. Evaluation Plan (30 Points)

The extent to which the applicant describes a realistic plan to accurately measure the effectiveness of their activities, and a plan to implement the quality improvements indicated by this method over the life of the project. This may include a discussion of efforts undertaken to measure the effectiveness of the applicant's existing outreach and educational activities.

4. Facilities, Staff and Resources (10 Points)

The extent to which the applicant can provide adequate facilities, staff, collaborators, and resources to accomplish the proposed goal(s) and objectives during the project period. The extent to which the applicant demonstrates staff and collaborator availability, expertise, previous experience, and capacity to perform the undertaking successfully.

5. Budget (Not Scored)

The extent to which the proposal demonstrates appropriateness and justification of the requested budget relative to the activities proposed.

V.2. Review and Selection Process

Applications will be reviewed for completeness by the Procurement and Grants Office (PGO) staff, and for responsiveness by the NCEH. Incomplete applications and applications that are non-responsive to the eligibility criteria will not advance through the review process. Applicants will be notified that their application did not meet submission requirements.

An objective review panel will evaluate complete and responsive applications according to the criteria listed in the ''V.1. Criteria'' section above. The objective review panel participants will be CDC employees, all of whom work outside the NCEH.

Applications will be funded in order by score and rank determined by the review panel.

V.3. Anticipated Announcement and Award Dates

Anticipated award date is August 31, 2005.

VI. Award Administration Information

VI.1. Award Notices

Successful applicants will receive a Notice of Award (NoA) from the CDC Procurement and Grants Office. The NoA shall be the only binding, authorizing document between the recipient and CDC. The NoA will be signed by an authorized Grants Management Officer, and mailed to the recipient fiscal officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review by mail.

VI.2. Administrative and National Policy Requirements

45 CFR Part 74 and Part 92. For more information on the Code of Federal Regulations, see the National Archives and Records Administration at the following Internet address: *http://www.access.gpo.gov/nara/cfr/cfr-table-search.html.*

The following additional requirements apply to this project:

- AR–7 Executive Order 12372.
- AR–8 Public Health System Reporting Requirements.
- AR–10 Smoke-Free Workplace Requirements.
- AR–11 Healthy People 2010.
- AR–12 Lobbying Restrictions.
- AR–14 Accounting System Requirements.
- AR–23 States and Faith-Based Organizations.
- AR–24 Health Insurance Portability and Accountability Act Requirements.

Additional information on these requirements can be found on the CDC Web site at the following Internet address: *http://www.cdc.gov/od/pgo/funding/ARs.htm.*

An additional Certifications form from the PHS5161–1 application needs to be included in your Grants.gov electronic submission only. Refer to *http://www.grants.gov/od/pgo/funding/PHS5161–1Certificates.pdf.* Once the form is filled out, attach it to your Grants.gov submission as Other Attachment Forms.

VI.3. Reporting Requirements

You must provide CDC with an original, plus two hard copies of the following reports:

1. Interim progress report, due no less than 90 days before the end of the budget period. The progress report will serve as your non-competing continuation application, and must contain the following elements:
   a. Current Budget Period Activities Objectives.
   b. Current Budget Period Financial Progress.
   c. New Budget Period Program Proposed Activity Objectives.
   d. Budget.
   e. Measures of Effectiveness.
   f. Additional Requested Information.
2. Annual progress report, due 30 days after the end of the budget period. The annual progress report must contain the following elements:
   a. Current Budget Period Activities Objectives.
   b. Lessons Learned.
3. Financial status report and annual progress report, no more than 90 days after the end of the budget period.
4. Final financial and performance reports, no more than 90 days after the end of the project period.

These reports must be mailed to the Grants Management or Contract Specialist listed in the ''Agency Contacts'' section of this announcement.

VII. Agency Contacts

We encourage inquiries concerning this announcement.

For general questions, contact: Technical Information Management Section, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341; telephone: 770–488–2700.

For program technical assistance, contact: Sheri Disler, Project Officer, 1600 Clifton Road, NE, MS E–17, Atlanta, GA 30303; telephone: 404–498–1018, e-mail: *SDisler@cdc.gov.*

For financial, grants management, or budget assistance, contact: Edna Green, Grants Management Specialist, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341; telephone: 770–488–2743, e-mail: *EGreen@cdc.gov.*

VIII. Other Information

This and other CDC funding opportunity announcements can be found on the CDC Web site, Internet address: *http://www.cdc.gov.* Click on ''Funding'' then ''Grants and Cooperative Agreements.''

Dated: April 14, 2005.

William P. Nichols,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 05–7888 Filed 4–19–05; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2004N–0486]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Experimental Study of Health Claims on Food Packages

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by May 20, 2005.

ADDRESSES: OMB is still experiencing significant delays in the regular mail, including first class and express mail, and messenger deliveries are not being accepted. To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: Fumie Yokota, Desk Officer for FDA, FAX: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Peggy Robbins, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Experimental Study of Health Claims on Food Packages

The authority for FDA to collect the information derives from the FDA Commissioner's authority, as specified in section 903(d)(2) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 393(d)(2)).

To help consumers reduce their risk of disease and improve their health by making sound dietary decisions, in the **Federal Register** of November 25, 2003 (68 FR 66040), FDA issued an advance notice of proposed rulemaking (ANPRM) to request comments on various issues related to health claims on conventional food and dietary supplement labels. One of the issues that FDA raised in the ANPRM related to whether the wording of a health claim needs to refer to the substance (a component of food, e.g., a nutrient) that is the basis of the claim. (Hereinafter, the term ''health claim'' will refer only to a claim meeting the standard of significant scientific agreement or, in other words, an FDA- authorized claim.) For instance, in the example of the calcium-osteoporosis claim (''Calcium may reduce the risk of osteoporosis''), FDA currently requires that the substance that is the basis of the claim (in this case, calcium) be included in the wording of the claim (21 CFR 101.72). The requirement that the substance in a health claim be included in the wording of the claim was motivated by FDA's experience that most substances that are the subject of an authorized health claim are, like calcium, substances that can be found in a number of foods. Therefore, FDA requires that health claims refer to the common substance to assist consumers in their understanding of the nature of the diet-health relationship and, more importantly, to help consumers recognize that they can construct healthy diets by using a variety of foods that contain the substance.

FDA requests comments on the usefulness of such statements (e.g., ''Calcium-rich foods, such as yogurt, may reduce the risk of osteoporosis'') versus ''food-specific'' claims that do not specify the food component (e.g., ''Yogurt may reduce the risk of osteoporosis''). How consumers respond to the two kinds of statements can suggest how the explicit mention of a food component in a claim affects dietary choices which, in turn, informs any policy initiative(s) that FDA may undertake in the future to provide information to consumers to help them make informed food choices.

The purpose of the proposed collection of information is to enhance FDA's understanding of consumer responses to health claims and inform any policy initiative(s) that FDA may undertake in the future. The information will be used to assess what differences, if any, the inclusion of the food component in a health claim makes in the following areas: (1) Consumer recognition of the food component underlying a diet-disease relationship; (2) consumer recognition that, in addition to the food product that carries the claim, there are other foods from which they can obtain the food component; and (3) consumer perceptions of, and attitudes toward, the food.

The proposed collection of information is a controlled randomized experimental study. The study will use a 6 x 3 within-subjects design (6 front-panel health claims/health messages x 3 diet-disease relationships), with participants randomly assigned to experimental conditions. In total, the study will examine 18 experimental conditions (6 front-panel health claim/health message conditions x 3 diet-disease relationships), each condition is a combination of a front-panel condition and a diet-disease relationship.

The term ''health message'' refers to nutrient content claims, structure/function claims, and dietary guidance statements. Prior knowledge of foods, components of food (e.g., nutrients), and risks will be measured; such prior knowledge will serve as covariates in the analysis. There are two independent variables, type of front-panel health claim/health message and type of diet-disease relationship. Health claim/health message conditions include the following items:

1. A ''food-specific'' health claim, e.g., ''Yogurt may reduce the risk of osteoporosis;''
2. A ''nutrient-specific'' health claim, e.g., ''Calcium-rich foods, such as yogurt, may reduce the risk of osteoporosis;''
3. A nutrient content claim, e.g., ''a good source of calcium;''
4. A structure/function claim, e.g., ''Helps promote bone health;''
5. A dietary guidance statement, e.g., ''Dairy products may reduce the risk of osteoporosis;'' and
6. No health claim/health message.

Claims on food labels must be truthful and nonmisleading as required under sections 201(n) and 403(a)(1) of the act (21 U.S.C. 321(n) and 343(a)(1)).

Health messages other than the two health claims are included solely for methodological purposes. The ''no health claim/health message'' condition is included to examine what consumers already know about nutrients or food sources, even when neither of them is mentioned on a label. Health messages are frequently found on food product packages and provide consumers various amounts of information about

food products and their relationships to health. Whether consumer responses to these health messages are consistent with their responses to the two health claims will help generalize the findings. An examination of response differences between health messages that mention (e.g., a nutrient content claim) or do not mention (e.g., a structure/function claim) a nutrient or food source, and between these health messages and the two health claims in question can help validate any effects observed between the two health claims. This validation will in turn enhance the external validity of the findings between the ''food-specific'' and ''nutrient-specific'' health claims. We emphasize, however, that the inclusion of examples of structure/function claims, nutrient content claims, and dietary guidance statements does not in any way suggest or imply any new or impending change in regulatory actions regarding these messages.

The study proposes to include three examples of diet-disease relationships: (1) Yogurt-calcium-osteoporosis, (2) orange juice-potassium-hypertension, and (3) bread-''lysoton''-diabetes. Lysoton is a fictitious substance; this fictitious relationship is included for test purposes only. The study includes these particular relationships solely for the purpose of covering varying levels of consumer familiarity with the foods, nutrients, and risks and to enhance the usefulness of the study findings. We emphasize that the choice to use these particular diet-disease relationships in this study does not in any way suggest or imply any new or impending change in regulatory actions regarding the use of these health claims/health messages or the scientific basis of these relationships.

The planned universe of this experimental study is members of an Internet consumer panel, all of them are adults (18 years or older). The study will use a two-phase data collection methodology. Phase 1 is an Internet interview to ask about prior knowledge. Phase 2 is another Internet interview of the same individuals to elicit responses to experimental conditions. The two interviews will be administered at least a week apart. An understanding of the influences of prior knowledge on consumer responses will help reveal factors associated with differential responses and extend the usefulness of the findings to similar messages about other diet-disease relationships. It is necessary to collect prior knowledge information before and separately from collecting responses to health claims and health messages to minimize demand and confounding effects between prior knowledge and message responses.

Target sample size of the study is 1,060 participants who complete both interviews. Participants will be randomly assigned to the same 2 of the 18 experimental conditions in both interviews. Each of the two conditions includes a different diet-disease relationship and a different front-panel condition. Presentation order of the conditions will be counter-balanced within the sample. All front panels will be full-color and patterned after existing labels in the market. Both the front and back panels of a label will be available during the interview. Back panel information (e.g., nutrient contents) will be kept constant between front-panel conditions for a given food product.

The following key information is to be collected:

1. Responses to the experimental conditions such as perceived health benefits, substances related to the benefits, other food sources that may offer the same benefits;
2. Prior knowledge of diet-disease relationships;
3. Food purchase and consumption experience;
4. Interest in food and food purchase decisions;
5. Use of dietary supplements, special diets, and health status; and
6. Demographic characteristics.

In the **Federal Register** of December 10, 2004 (69 FR 71819), FDA published a 60-day notice requesting public comment on the information collection provisions. FDA received two comments, both from the food industry.

One comment supported consumer research to enhance health message communication as a means to help consumers make sound dietary decisions. The comment suggested that to improve the quality of the study and analysis the agency should lay out the objective(s) and analysis plan of the study, consider asking about how helpful a health message is in helping consumers make food choices, consider asking respondents to read the health message on the stimulus, and consider increasing the sample size.

The agency agrees that objective, analysis plan, and pertinent measures are essential for ensuring the quality of the study. As suggested in the 60-day notice, the study is designed primarily to help understand how well food-specific health claims communicate information compared to nutrient-specific health claims, and secondarily to help understand how well health messages that include the nutrient communicate information compared to other health messages that do not include the nutrient. The agency has developed preliminary dependent measures and decision rules for analysis. In addition, the agency has added questions on the helpfulness of the messages and used a technique to ensure that participants have noticed the health message on the stimulus.

The agency is not persuaded that the sample size needs to be increased. The agency has carefully considered the sample size required for the study and consulted the relevant research. The agency has determined that the planned sample size, 1,060 in total and approximately 360 per health claim condition (120 per diet-disease relationship x 3 diet-disease relationships), is sufficient to detect meaningful main effects of repeated-measures binary responses, such as whether the responsible nutrient is recognized, and to detect interaction effects between diet-disease relationships and health message conditions.

The other comment also recognizes the importance of consumer research. It asserts, however, that the proposed study should be abandoned for two reasons. First, by testing generic and hypothetical products, brands, and marketing contexts, the agency is misconstruing its legal authority under the applicable First Amendment standards (i.e., the comment states that FDA needs to justify regulatory restrictions on the expression of any particular health claim by demonstrating alleged harms and showing that the restrictions would alleviate the harm). The comment asserts that, under such requirements, FDA's obligations are case-specific, i.e., targeted at a particular marketer with respect to a particular health claim expression. Second, the comment states that the impression consumers take away from a particular health claim cannot be evaluated in a scientifically valid or reliable manner through academic research that attempts to isolate the meaning of health claims from its context. The comment further asserts that even if valid findings are possible, they would have no validity or meaning under real world conditions. Hence, the comment argues that claims need to be tested on real product labels and in a real purchasing context.

FDA disagrees with this comment. The agency notes that the research approach mentioned in the comment, testing specific claims on specific products in specific contexts, would be appropriate if the agency's only mission were to protect consumers from harms caused by deceptive product labeling, and if the objective of the study were to

gather evidence on whether a labeling statement on a specific product marketed in a specific context could produce the alleged harm and the harm is material.

In addition to protecting consumer health from harms caused by deceptive product labeling, however, the agency's mission also calls for advancing consumer health by providing information about food products to help consumers improve their health and decrease the risk of contracting diseases by making sound dietary choices. The study was proposed with this mission in mind and, therefore, neither intends, nor is designed to demonstrate any harm attributable to any specific health messages on any specific products. As stated in the 60-day notice, the study will hold back-panel information (e.g., nutrient contents) constant between front-panel conditions for a given food product. Furthermore, the nutrient contents of test products will meet current regulatory standards for various health messages. Therefore, by design, the study approach precludes any attempt to examine any potential harm as purported in the comment. Instead, the study approach is commonly used and accepted by researchers for the purpose of investigating communication efficacy of label stimuli.

Health messages such as health claims are intended for use by all qualifying marketers and in all qualifying products, rather than certain specific marketers or products. Hence, under the agency's regulatory regime, the study does not intend to examine specific claims on specific products in specific contexts, as individual marketers would do. Rather, the study will attempt to illustrate possible consumer responses to different types of health messages that may be found on packages of various food products. Finally, the agency notes that, despite the discordance between experimental contexts and the real world, experimental findings are widely recognized and accepted as the best available evidence to demonstrate communication efficacy.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

Activity	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
Pretest	60	1	60	0.5	30
Invitation	2,000	1	2,000	0.02	40
Interview, Phase 1	1,060	1	1,060	0.17	180
Interview, Phase 2	1,060	1	1,060	0.25	265
Total					515

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

Prior to the administration of the interview, the agency plans to conduct pretests of the final questionnaires to minimize potential problems in administration of the interviews. The pretests, each lasting 30 minutes (0.5 hours), will be conducted in up to 3 waves, each with 20 participants. A contractor will send 2,000 e-mail invitations to recruit participants. We assume 50 percent of those contacted will agree to participate in the interviews (1,060 respondents). The interviews are expected to last 10 minutes (0.17 hours) and 15 minutes (0.25 hours) for phase 1 and phase 2, respectively.

The planned sample size per condition is approximately 120. The agency expects small main effects. Therefore, the planned sample size should yield a power of 0.8 at the 0.05 significance level.

Dated: April 13, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05–7822 Filed 4–19–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2004N–0470]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; New Animal Drugs For Investigational Use

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (the PRA).

DATES: Fax written comments on the collection of information by May 20, 2005.

ADDRESSES: OMB is still experiencing significant delays in the regular mail, including first class and express mail, and messenger deliveries are not being accepted. To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: Fumie Yokota, Desk Officer for FDA, FAX 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Denver Presley, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, rm. 4B–41, Rockville, MD 20857, 301–827–1472.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

New Animal Drugs for Investigational Use—21 CFR Part 511 (OMB Control Number 0910–0117)—Extension

FDA has the responsibility under the Federal Food, Drug, and Cosmetic Act (the act), for approval of new animal drugs. Section 512(j) of the act (21 U.S.C. 360b(j)), authorizes FDA to issue regulations relating to the investigational use of new animal drugs. The regulations setting forth the conditions for investigational use of new animal drugs have been codified at part 511 (21 CFR part 511). A sponsor

must submit to FDA a Notice of Claimed Investigational Exemption (INAD), before shipping the new animal drug for clinical tests in animals. The INAD must contain, among other things, the following specific information: (1) Identity of the new animal drug, (2) labeling, (3) statement of compliance of any nonclinical laboratory studies with good laboratory practices, (4) name and address of each clinical investigator, (5) the approximate number of animals to be treated or amount of new animal drug(s) to be shipped, and (6) information regarding the use of edible tissues from investigational animals. Part 511 also requires that records be established and maintained to document the distribution and use of the investigational drug to assure that its use is safe, and that distribution is controlled to prevent potential abuse. The agency utilizes these required records under its Bio-Research Monitoring Program to monitor the validity of the studies submitted to FDA to support new animal drug approval and to assure that proper use of the drug is maintained by the investigator.

Investigational new animal drugs are used primarily by drug industry firms, academic institutions, and the government. Investigators may include individuals from these entities as well as research firms and members of the medical profession. Respondents to this collection of information are the persons who use new animal drugs investigationally.

In the **Federal Register** of November 10, 2004 (69 FR 65198), FDA published a 60-day notice requesting public comment on the information collection provisions. No comments were received.

FDA estimates the burden for this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
511.1(b)(4)	190	4.09	778	8	6,224
511.1(b)(5)	190	0.58	110	140	15,400
511.1(b)(6)	190	.01	20	1	20
511.1(b)(8)(ii)	190	.005	1	20	20
511.1(b)(9)	190	.10	20	8	160
Total					21,824

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

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	No. of Recordkeepers	Annual Frequency per Record	Total Annual Records	Hours per Recordkeeper	Total Hours
511.1(a)(3)	190	2.11	400	9	3,600
511.1(b)(3)	190	4.20	798	1	798
511.1(b)(7)(ii)	400	3.00	1,200	3.5	4,200
511.1(b)(8)(i)	190	6.38	1,200	3.5	4,200
Total					12,798

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

The estimate of the time required for reporting requirements, record preparation and maintenance for this collection of information is based on agency communication with industry. Additional information needed to make a final calculation of the total burden hours (i.e. the number of respondents, the number of recordkeepers, the number of INAD applications received, etc.) is derived from agency records.

Dated: April 13, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05–7823 Filed 4–19–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2004N–0469]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Adverse Experience Reporting for Licensed Biological Products; and General Records

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by May 20, 2005.

ADDRESSES: OMB is still experiencing significant delays in the regular mail, including first class and express mail, and messenger deliveries are not being accepted. To ensure that comments on the information collection are received, OMB recommends that written

comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: Fumie Yokota, Desk Officer for FDA, FAX: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Jonna Capezzuto, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Adverse Experience Reporting for Licensed Biological Products; and General Records—(OMB Control Number 0910–0308—Extension)

Under the Public Health Service Act (42 U.S.C. 262), FDA is required to ensure the marketing of only those biological products that are safe and effective. FDA must, therefore, be informed of all adverse experiences occasioned by the use of licensed biological products. FDA issued the adverse experience reporting (AER) requirements in part 600 (21 CFR part 600) to enable FDA to take actions necessary for the protection of the public health in response to reports of adverse experiences related to licensed biological products. The primary purpose of FDA's AER system is to flag potentially serious safety problems with licensed biological products, focusing especially on newly licensed products. Although premarket testing discloses a general safety profile of a biological product's comparatively common adverse effects, the larger and more diverse patient populations exposed to the licensed biological product provides the opportunity to collect information on rare, latent, and long-term effects. Reports are obtained from a variety of sources, including patients, physicians, foreign regulatory agencies, and clinical investigators. Information derived from the AER system contributes directly to increased public health protection because such information enables FDA to recommend important changes to the product's labeling (such as adding a new warning), to initiate removal of a biological product from the market when necessary, and to assure the manufacturer has taken adequate corrective action, if necessary.

The regulation in § 600.80(c)(1) requires the licensed manufacturer to report each adverse experience that is both serious and unexpected, whether foreign or domestic, as soon as possible but in no case later than 15 calendar days of initial receipt of the information by the licensed manufacturer and to submit any followup reports within 15 calendar days of receipt of new information, or as requested by FDA.

Section 600.80(e) requires licensed manufacturers to submit a 15-day alert report obtained from a postmarketing clinical study only if there is a reasonable possibility that the product caused the adverse experience. Section 600.80(c)(2) requires the licensed manufacturer to report each adverse experience not reported under § 600.80(c)(1)(i) at quarterly intervals, for 3 years from the date of issuance of the biologics license, and then at annual intervals. The majority of the periodic reports will be submitted annually since a large percentage of the current licensed biological products have been licensed longer than 3 years. Section 600.80(i) requires the licensed manufacturer to maintain, for a period of 10 years, records of all adverse experiences known to the licensed manufacturer, including raw data and any correspondence relating to the adverse experiences. Section 600.81 requires the licensed manufacturer to submit information about the quantity of the product distributed under the biologics license, including the quantity distributed to distributors at an interval of every 6 months. The semiannual distribution report informs FDA of the quantity, certain lot numbers, labeled date of expiration, the number of doses, and date of release. Under § 600.90, a licensed manufacturer may submit a waiver request that applies to the licensed manufacturer under § § 600.80 and 600.81. A waiver request submitted under § 600.90 must be submitted with supporting documentation.

Manufacturers of biological products for human use must keep records of each step in the manufacture and distribution of products including the recalls of the product. The recordkeeping requirements serve preventative and remedial purposes. These requirements establish accountability and traceability in the manufacture and distribution of products, and enable FDA to perform meaningful inspections.

Section 600.12 requires that all records of each step in the manufacture and distribution of a product be made and retained for no less than 5 years after the records of manufacture have been completed or 6 months after the latest expiration date for the individual product, whichever represents a later date. In addition, records of sterilization of equipment and supplies, animal necropsy records, and records in cases of divided manufacturing of a product are required to be maintained. Section 600.12(b)(2) requires complete records to be maintained pertaining to the recall from distribution of any product.

Respondents to this collection of information are manufacturers of biological products. In table 1 of this document, the number of respondents is based on the estimated number of manufacturers that submitted the required information to FDA in fiscal year (FY) 2002 and 2003. Based on information obtained from the Center for Biologics Evaluation and Research's (CBER's) database system, there were 90 licensed biologics manufacturers. This number excludes those manufacturers who produce blood and blood components and in-vitro diagnostic licensed products because these products are specifically exempt from the regulations under § 600.80(k). The total annual responses are based on the average estimated number of submissions received annually by FDA for FY 2002 and 2003. However, not all manufacturers have submissions in a given year and some may have multiple submissions. There were an estimated 15,126 15-day alert reports, 6,550 periodic reports, and 323 lot distribution reports submitted to FDA. The number of 15-day alert reports for post-marketing studies under § 600.80(e) is included in the total number of 15-day alert reports. FDA received an average of five waiver requests for FY 2002 and 2003 under § 600.90, all of which were approved for exemption of the AER requirements. The hours per response are based on FDA's experience. The burden hours required to complete the MedWatch Form for § 600.80(c)(1), (e), and (f) are reported under OMB control number 0910–0291.

In the **Federal Register** of November 3, 2004 (69 FR 64069), FDA published a 60-day notice requesting public comment on the information collection provisions. No comments were received.

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Respondent	Total Hours
600.80(c)(1) and (e)	90	168.07	15,126	1	15,126
600.80(c)(2)	90	72.78	6,550	28	183,400
600.81	90	3.59	323	1	355
600.90	5	1	5	1	5
Total					198,886

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

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	No. of Recordkeepers	Annual Frequency per Record	Total Annual Records	Hours per Recordkeeper	Total Hours
600.12	116	57.16	6,630	32	212,160
600.12(b)(2)	320	6.12	1,958	24	46,992
600.80(i)	90	394.27	35,484	1	35,484
Total					294,636

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

Dated: April 13, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05–7824 Filed 4–19–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2005N–0123]

Agency Information Collection Activities; Proposed Collection; Comment Request; Survey of Need for Online Medical Device Information

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information and to allow 60 days for public comment in response to the notice. This notice solicits comments on a survey of customers who should be served by FDA's Center for Devices and Radiological Health (CDRH) Web site, in order to determine the kind and quality of services they want.

DATES: Submit written or electronic comments on the collection of information by June 20, 2005.

ADDRESSES: Submit electronic comments on the collection of information to: *http://www.fda.gov/dockets/ecomments*. Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Peggy Robbins, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Survey of Need for Online Medical Device Information

Executive Order 12862 directs agencies to identify the customers who are, or should be, served by the agency, and to survey customers to determine the kind and quality of services they want.

This proposed survey will collect data about the information customers want

when looking up medical devices on the Internet. It will focus on the ways individuals find, use, and rate existing sources of online medical device information. FDA will use this data to understand more about its customers and to make improvements to its own Web site.

FDA will administer this survey to individuals who use the Internet to look for information about medical devices. The survey will consist of three components: A screening tool of 5,000 to identify appropriate respondents, an online survey of 500 customers, and a telephone followup interview with 50 customers.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

Activity	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
Screening tool	5,000	1	5,000	.05	250
Online survey	500	1	500	.25	125
Telephone followup	50	1	50	.5	25
Total					400

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

Dated: April 13, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05–7882 Filed 4–19–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2005N–0137]

Levothyroxine Sodium Therapeutic Equivalence; Public Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting; request for comments.

SUMMARY: The Food and Drug Administration (FDA) is announcing a public meeting on the therapeutic equivalence of levothyroxine sodium drug products. This will be a workshop involving FDA staff and representatives of three medical societies: The American Thyroid Association (ATA), the Endocrine Society, and the American Association of Clinical Endocrinologists (AACE). The purpose of the public meeting is to discuss FDA's regulatory standards and methodological approaches for determining therapeutic equivalence between levothyroxine sodium drug products. The agency is seeking comments and input from interested constituencies, including patient advocacy and education groups, and pharmaceutical sponsors.

DATES: The public meeting will be held on May 23, 2005, from 8:30 a.m. to 5 p.m. Submit written or electronic comments by July 23, 2005.

ADDRESSES: The public meeting will be held at the National Transportation Safety Board Boardroom and Conference Center, 429 L'Enfant Plaza, SW., Washington, DC 20594, 202–314–6421. The center can be reached by Metro using the L'Enfant Plaza station on the green, yellow, blue, and orange lines. For directions, see *http://ntsb.gov/events/newlocation.htm*. (FDA has verified the Web site address, but FDA is not responsible for any changes to the Web site after this document publishes in the **Federal Register**.)

Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*.

FOR FURTHER INFORMATION CONTACT: Rose Cunningham, Center for Drug Evaluation and Research (HFD–006), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20852, 301–443–5595, e-mail: *cunninghamr@cder.fda.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of August 14, 1997 (62 FR 43535), FDA declared that oral drug products containing levothyroxine sodium were considered new drugs and subject to regulation as such. The document called for new drug applications (NDAs) for levothyroxine sodium products from sponsors wishing to market such products in the United States after August 14, 2000. This deadline was eventually extended to August 14, 2001.

The NDAs submitted for levothyroxine sodium products included literature references supporting the safety and effectiveness of levothyroxine sodium for the proposed indications and full manufacturing information supporting the purity, potency, and stability of the products. Manufacturers were required to target 100 percent of the labeled levothyroxine sodium content at release. (Some manufacturers had historically added a ''stability overage'' to give their products a longer shelf-life.) In addition, bioavailability and in vitro dissolution studies were required to establish that the products were readily and consistently absorbed across the range of dosage strengths proposed to be marketed. To assist manufacturers, in December 2000, FDA published a guidance on the conduct of in vivo pharmacokinetic and bioavailability studies and in vitro dissolution tests on these products.

FDA has approved seven NDAs for levothyroxine sodium products. None were originally rated as interchangeable with any other. Since their approval, FDA has approved supplemental NDAs from some sponsors demonstrating the therapeutic equivalence (interchangeability) of their products to other approved levothyroxine sodium products. The agency has also approved one levothyroxine sodium product under an abbreviated new drug application (ANDA).

ATA, the Endocrine Society, and AACE have questioned FDA's regulatory and scientific standards for determination of therapeutic equivalence of levothyroxine sodium products, particularly FDA's bioequivalence methodology.

II. Scope of the Public Meeting

The public meeting is intended to review FDA's regulatory and scientific approach to levothyroxine sodium products, including manufacturing standards, in vitro dissolution studies, and bioavailability/bioequivalence methods.

The public meeting will also review clinical, scientific, and methodological issues relevant to the possible use of serum thyrotropin concentration as a pharmacodynamic measure of levothyroxine sodium bioequivalence.

The public meeting will include representatives from FDA and from the three medical societies. A series of brief presentations will frame the issues under consideration, followed by panel discussions involving speakers and moderators, with questions and comments from the audience. Other interested constituencies (e.g., patient advocacy and education groups, pharmaceutical sponsors, general public) will have an opportunity to provide input during the question and comment periods.

III. Registration, Agenda, and Presentations

No registration is required to attend the meeting. Seating will be on a first-come, first-served basis. If you need special accommodations due to a disability, please contact (see **FOR FURTHER INFORMATION CONTACT**).

The agenda for public meeting will be available on FDA's Center for Drug Evaluation and Research Web site at *http://www.fda.gov/cder/meeting/levothyroxine.htm* and at the meeting. After the meeting, the agenda, presentations, and transcript will be placed on file in the Division of Dockets Management under the docket number found in the heading of this document and on CDER's Web site identified previously.

IV. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments on the topics discussed in this document. Submit two copies of mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments are available for public examination in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

V. Transcripts

Copies of the transcript may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, rm. 12A–16, Rockville, MD 20857, approximately 20 working days after the meeting at a cost of 10 cents per page or on compact disc at a cost of $14.25 each. You may also examine the transcript at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: April 14, 2005.

Jeffery Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05–7883 Filed 4–19–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2005D–0133]

Draft ''Guidance for Industry: Assessing Donor Suitability and Blood and Blood Product Safety in Cases of Known or Suspected West Nile Virus Infection;'' Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft document entitled ''Guidance for Industry: Assessing Donor Suitability and Blood and Blood Product Safety in Cases of Known or Suspected West Nile Virus Infection,'' dated April 2005. The draft guidance document provides revisions to the previously published recommendations for assessing donor suitability and product safety when donors are diagnosed with or suspected of West Nile Virus (WNV) infections based on symptoms and laboratory tests. This draft guidance proposes revised deferral periods for such donors, and updates information on product retrieval and quarantine. When finalized, this guidance will supersede ''Guidance for Industry: Revised Recommendations for the Assessment of Donor Suitability and Blood and Blood Product Safety in Cases of Known or Suspected West Nile Virus Infection,'' dated May 2003.

DATES: Submit written or electronic comments on the draft guidance by May 20, 2005, to ensure their adequate consideration in preparation of the final guidance. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Office of Communication, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist the office in processing your requests. The draft guidance may also be obtained by mail by calling the CBER Voice Information System at 1–800–835–4709 or 301–827–1800. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

Submit written comments on the draft guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*.

FOR FURTHER INFORMATION CONTACT: Brenda R. Friend, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft document entitled ''Guidance for Industry: Assessing Donor Suitability and Blood and Blood Product Safety in Cases of Known or Suspected West Nile Virus Infection,'' dated April 2005. FDA developed the information in this draft guidance after consulting with other Public Health Service agencies of the Department of Health and Human Services.

This draft guidance:

- Applies to donors of blood and blood components intended for transfusion;
- Applies to donors of blood components intended for use in further manufacturing into injectable products or noninjectable products, including recovered plasma, Source Leukocytes, and Source Plasma;
- Provides updated scientific data;
- Removes the current recommendation for donor deferral based upon a reported history of headache with fever in the week before donation;
- Proposes new deferral periods for donors who are diagnosed with or suspected of WNV infections;
- Describes the use of the investigational nucleic acid test (NAT) for WNV in deferring reactive donors; and
- Provides information about the use of individual donor NAT testing to re-enter reactive donors if a blood establishment, at its discretion, chooses to reenter such donors.

This draft guidance, when finalized, will supersede ''Guidance for Industry: Revised Recommendations for the Assessment of Donor Suitability and Blood and Blood Product Safety in Cases of Known or Suspected West Nile Virus Infection,'' dated May 2003.

The draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the agency's current thinking on this topic. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirement of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

This draft guidance contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The information collection provisions in this guidance for 21 CFR 601.12 were approved under OMB control number 0910–0338; 21 CFR 606.170(b) was approved under OMB control number 0910–0116; and 21 CFR 606.171 was approved under OMB control number 0910–0458.

III. Comments

The draft guidance is being distributed for comment purposes only and is not intended for implementation at this time. Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding the draft guidance. Submit written or electronic comments to ensure adequate consideration in preparation of the final guidance. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in the brackets in the heading of this document. A copy of the draft guidance and received comments are available for public examination in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

IV. Electronic Access

Persons with access to the Internet may obtain the draft guidance at either *http://www.fda.gov/cber/guidelines.htm* or *http://www.fda.gov/ohrms/dockets/default.htm*.

Dated: April 13, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05–7821 Filed 4–19–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Methods for Tumor Treatment Using Dendrimer Conjugates

Hisataka Kobayashi and Peter Choyke (NCI)

U.S. Provisional Application filed 11 Mar 2005 (DHHS Reference No. E–107–2005/0–US–01)

Licensing Contact: Michael Shmilovich; 301/435–5019; *shmilovm@mail.nih.gov.*

Available for licensing and commercial development are dendrimer based methods for treating cancer. The dendrimer conjugate comprises an effective amount of an anti-tumor agent. A generation 5 DAB, generation 2 polylysine, or generation 6–8 PAMAM dendrimer (*e.g.,* PAMAM–G6) conjugate is administered to a cancer patient. The anti-tumor agent is selectively concentrated in the lymphatic system to treat metastatic disease. The anti-tumor agent can be one that is activated after selective aggregation in the lymphatic system. When an activatable anti-tumor agent is used, it may be activated by applying physical energy to the subject's body, for example by external application of that energy to the body. In particular examples, the external energy is heat, ultrasound, or electromagnetic energy. In particular, the physical energy can be a particle beam, such as a neutron beam.

The dendrimer conjugates may include an imaging agent, which permits the lymphatic system to be imaged when selective intra-lymphatic concentration of the dendrimer occurs. Further, when the dendrimer conjugate includes an activatable anti-tumor agent, the method may include selectively applying physical energy to the subject's body to selectively activate the anti-tumor agent in the lymphatic system. The dendrimer conjugate can include gadolinium, wherein the gadolinium acts as a contrast agent to image the lymphatic system.

In a particular example, the dendrimer conjugate includes a gadolinium-imaging agent that is activatable by a neutron beam. Once the gadolinium containing dendrimer conjugate is concentrated in the lymphatic system, detecting selective concentration of the dendrimer conjugate in the lymphatic system images the lymphatic system. The presence of tumor in lymph nodes can also be detected using this imaging technique. A neutron beam is then selectively applied to the imaged lymphatic system to selectively activate the anti-tumor agent at target areas in the lymphatic system for the treatment of metastatic tumor. In this example, the target area may be a lymph node, such as a sentinel lymph node, or a lymphatic vessel. The target area, when imaged, may show evidence of primary or metastatic tumor.

In addition to licensing, the technology is available for further development through collaborative research opportunities with the inventors.

A Universal Antigen Delivery Platform for Enhanced Immune Response

John T. Patton and Zenobia F. Taraporewala (NIAID)

U.S. Provisional Application No. 60/633,036 filed 03 Dec 2004 (DHHS Reference No. E–322–2004/0–US–01)

Licensing Contact: Chekesha Clingman; 301/435–5018; *clingmac@mail.nih.gov.*

The present invention relates to a universal antigen delivery platform based on rotavirus NSP2 fusion proteins and methods for the use of such fusion proteins to enhance an immune response to an antigen. This technology

can potentially be used for rapid production of subunit vaccines against a wide range of infectious agents. Additional uses of the technology include development of diagnostic systems and production of specific antisera for research purposes. The antigen delivery platform comprises a monomeric fusion protein including (a) a self-aggregating polypeptide component (*e.g.* a viral NSP2 polypeptide); (b) a linear linking peptide; and (c) an antigenic polypeptide. Upon expression in prokaryotic or eukaryotic systems, multiple monomeric fusion protein subunits form a self-aggregating stable multimeric ring structure, which allows multivalent display of the antigen and enhances the immune response. Additionally, this delivery platform can be efficiently produced and recovered and is physically robust. The patent application also includes pharmaceutical compositions of vaccines for prophylactic and therapeutic administration.

Relevant publications: P. Schuck *et al.,* ''Rotavirus nonstructural protein NSP2 self-assembles into octamers that undergo ligand-induced conformational changes,'' J. Biol. Chem. (2001 March 30) 276(13):9679–9687, doi:10.1074/jbc.M009398200; H. Jayaram *et al.*, ''Rotavirus protein involved in genome replication and packaging exhibits a HIT-like fold,'' Nature (2002 May 16) 417(6886):311–315, doi:10.1038/417311a.

In addition to licensing, the technology is available for further development through collaborative research opportunities with the inventors.

Peptide Inhibitors of Yersinia Phosphatase (YopH) as Potential Treatments Against Plague

Terrence R. Burke, Jr., Kyeong Lee, Yang Gao, Jason Phan, David S. Waugh (NCI) U.S. Patent Application No. 10/341,607 filed 14 Jan 2003; International Application Number PCT/US04/00669 filed 12 Jan 2004, which published as WO 2004/065411 A3 on 05 Aug 2004 (DHHS Reference No. E–263–2002/0)

Licensing Contact: Cristina Thalhammer-Reyero; 301/435–4507; *thalhamc@mail.nih.gov.*

Available for licensing and commercial development are compounds that are useful as inhibitors of protein-tyrosine phosphatases (PTPs), and in particular, as inhibitors of the *Yersinia pestis* PTP (YopH). The compounds are tripeptides of the formula P–A–B–C, or prodrugs thereof, wherein A is an amino acid having a carboxy alkyl group (*e.g.*, carboxy C1-C6 alkyl group), B is a substituted tyrosine or phenylalanine, C is a hydrophobic amino acid, and P is an amine protecting group protecting the amine end of A. The inventors have discovered that a certain group on a specific residue is absolutely required to be present on those peptides in order to be active against YopH, and that another specific group results in higher affinity. These requirements are distinct from the requirements by other PTPs. Also disclosed are pharmaceutical compositions comprising such a compound and a pharmaceutically acceptable carrier. The invention also provides a method of inhibiting the YopH enzyme as well as a method of treating plague in an animal, *e.g.,* a human, exposed to or infected by *Yersinia pestis.* The compounds may be useful as anti-bioterrorism agents, and are potentially important for therapeutic development because they may facilitate bioavailablility, given the low ionic charge of the inhibitors.

The bacterium *Yersinia pestis* causes bubonic, pneumonic and septicemic plague, and it is considered as a potential bioterrorism agent. Within *Yersinia* is a 70 kb virulence plasmid, which encodes for a system of secreted proteins, called ''Yops'', which act either as intracellular effectors or as translocators. *Yersinia's* Yop system represents the archetype for one of the major virulence mechanisms in various pathogenic bacteria, referred to as type III, where extracellular bacteria that are in close contact with a eukaryotic cell deliver bacterial proteins into the cytosol of the cell. Other animal pathogens with related systems include the genera *Salmonella, Shigella, Pseudomonas, Chlamidia,* and *Bortedella,* as well as *E. coli.* One such effector protein, YopH, is a protein-tyrosine phosphatase (PTP) with a C-terminal catalytic domain that is essential to *Yersinia's* virulence, playing an antiphagocytic role by dephosporylating focal adhesion proteins. The phosphatase activity of YopH is required for bacterial pathogenesis.

Selections of Genes and Methods of Using the Same for Diagnosis and for Targeting the Therapy of Select Cancers

Javed Khan, Jun S. Wei and Braden T. Greer (NCI)

U.S. Provisional Application No. 60/598,728 filed 03 Aug 2004 (DHHS Reference No. E–324–2001/2-US–01)

Licensing Contact: Cristina Thalhammer-Reyero; 301/435–4507; *thalhamc@mail.nih.gov.*

Available for licensing and commercial development are selections of expressed genes that function to characterize neuroblastoma in patients, and methods of using the same for targeting the therapy of neuroblastoma and for predicting the outcome of the therapy. The invention also relates to the use of supervised pattern recognition methods, such as artificial neural networks using high dimensional data, such as gene expression profiling data, for the prognosis of patients with neuroblastoma to predict their outcome.

Currently, patients with neuroblastoma are classified into risk groups (*e.g.*, according to the Children's Oncology Group risk-stratification) to guide physicians in the choice of the most appropriate therapy. Despite this careful stratification, the survival rate for patients with high-risk neuroblastoma remains <30%, and it is not possible to predict which of these high-risk patients will survive or succumb to the disease. The inventors performed gene expression profiling using cDNA microarrays containing 42,578 clones and used artificial neural networks to develop an accurate predictor of survival for each individual patient with neuroblastoma. Using principal component analysis we found that neuroblastoma tumors exhibited inherent prognostic specific gene expression profiles, achieving 88% accuracy. They identified 19 genes, including 2 prognostic markers reported previously, MYCN and *CD44,* which correctly predicted outcome for 98% of these patients.

The technology is further described in: Jun S. Wei, Braden T. Greer, Frank Westermann, Seth M. Steinberg, Chang-Gue Son, Qing-Rong Chen, Craig C. Whiteford, Sven Bilke, Alexei L. Krasnoselsky, Nicola Cenacchi, Daniel Catchpoole, Frank Berthold, Manfred Schwab, and Javed Khan, ''Prediction of Clinical Outcome Using Gene Expression Profiling and Artificial Neural Networks for Patients with Neuroblastoma'', Cancer Research 64, 6883–6891, October 1, 2004.

Amine Modified Random Primers for Microarray Detection

Charles Xiang and Michael J. Brownstein (NIMH)

U.S. Provisional Application No. 60/283,423 filed 11 Apr 2001; International Application PCT/US02/11656 filed 11 Apr 2002, which published as WO02083922 on 24 Oct 2002; corresponding U.S. Patent Application No. 10/474,611 filed 09 Oct 2003, and EP, CA and AU applications (DHHS Reference No. E–098–2001/0)

Licensing Contact: Cristina Thalhammer-Reyero; 301/435–4507; *thalhamc@mail.nih.gov.*

Available for licensing and commercial development is a new method for labeling nucleic acid molecules for use in hybridization reactions, and kits employing these methods. The fluorescence-labeled cDNA probes for DNA microarray studies only use about 1/20th as much input RNA as the conventional methods. The method allows making high quality probes from as little as 1 ug of total RNA without RNA or signal amplification. It is based on priming cDNA synthesis with random hexamers to the 5' ends of which amino allyl modified bases have been added. Coupling of the fluorescent dye to the amine residues is performed after the cDNA is reverse transcribed. The method can be used in tandem with RNA amplification (and/or signal amplification) to label probes from 10 or fewer cells.

Furthermore, the invention also relates to a novel method to amplify RNA derived from single cells using T3-random 9mers and a new lysing method, which allow probe-labeling capabilities that are approaching the single cell level.

DNA Microarray technology has become one of the most important tools for high throughput studies in medical research with applications in the areas of gene discovery, gene expression and mapping. The suitability of DNA Microarray for profiling diseases and for identifying disease-related genes has also been also well documented. Most studies using DNA arrays involve preparation of fluorescent-labeled cDNA from the mRNA of the studied organism. The cDNA probes are then allowed to hybridize to the DNA fragments printed on the array, and the array is scanned and the data analyzed. Good results depend on a number of factors including high quality arrays and well-labeled probes. In order to achieve adequate sensitivity and reproducibility, probes have had to be prepared from rather large amounts of RNA using other methods.

The technology is further described in Xiang CC, Kozhich OA, Chen M, Inman JM, Phan QN, Chen Y, Brownstein MJ. ''Amine-modified random primers to label probes for DNA microarrays.'' Nat Biotechnol. 2002 Jul; 20(7): 738–42.

Methods for Manipulating Nucleic Acids

Charles Xiang and Michael J. Brownstein (NIMH)

U.S. Patent Application No. 10/269,515 filed 11 Oct 2002, published as US2003170675 on 11 Sept 2003 (DHHS Reference No. E–098–2001/1) and International Application PCT/US03/33319 filed 10 Oct 2003, published as WO 200/033669 on 22 April 2004 (DHHS Reference No. E–098–2001/2)

Licensing Contact: Cristina Thalhammer-Reyero; 301/435–4507; *thalhamc@mail.nih.gov.*

Available for licensing and commercial development are methods of labeling nucleic acid probes for the detection of nucleic acids molecules, for instance producing labeled probes for detecting hybridization signals, such as those from a microarray. This disclosure provides new methods for amplifying nucleic acid templates from very small samples, even as small as one cell. Nucleic acid templates amplified by the disclosed methods can be used in combination with any method that requires amplified nucleic acid. In addition, the amplified nucleic acid can be labeled with any labeling method, such as the labeling method disclosed herein. Also provided are methods for preparing modified nucleotide probes, from either amplified or unamplified nucleic acid templates. In one embodiment, the method includes the incorporation of modified nucleic acids into random primers that are used to initiate polymerization of a probe molecule. In another embodiment, the random primers include nucleotides that are modified by amine groups (such as aminoallyl moieties). In yet other embodiments, the modified nucleotides comprise a detectable molecule, such as a fluorophore or hapten. The disclosure also provides an improved method of extracting RNA from fixed cells or tissue sections for subsequent use as RNA templates or for generating labeled probe. In one specific embodiment, the cells are fixed with Dithio-bis (Succinimidyl Propionate) (DSP). Also disclosed are kits for producing a labeled hybridization probe, using a modified random primer, or for probing an array, and kits for amplifying nucleic acid templates from very small samples.

The technology is further described in: Xiang CC, Chen M, Kozhich OA, Phan QN, Inman JM, Chen Y, Brownstein MJ. ''Probe generation directly from small numbers of cells for DNA microarray studies.'' Biotechniques. 2003 Feb;34(2):386–8, 390, 392–3; Xiang CC, Chen M, Ma L, Phan QN, Inman JM, Kozhich OA, Brownstein MJ. ''A new strategy to amplify degraded RNA from small tissue samples for microarray studies.'' Nucleic Acids Res. 2003 May 1; 31(9):e53; Xiang CC, Brownstein MJ. ''Preparing fluorescent probes for microarray studies.'' Methods Mol Biol. 2003; 224:55–60; and Xiang CC, Mezey E, Chen M, Key S, Ma L, Brownstein MJ. ''Using DSP, a reversible cross-linker, to fix tissue sections for immunostaining, microdissection and expression profiling'' Nucleic Acids Res. 2004 Dec 16; 32(22): e185.

Dated: April 11, 2005.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 05–7848 Filed 4–19–05; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: (301) 496–7057; fax: (301) 402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Triptolide To Induce Immunotolerance

Xin Chen *et al.* (NCI).

U.S. Provisional Application 60/638,640 filed 22 Dec 2004 (DHHS Reference No. E–358–2004/0–US–01).

Licensing Contact: Fatima Sayyid; (301) 435–4521; *sayyidf@mail.nih.gov.*

Dendritic cells represent a heterogeneous population of antigen-presenting cells that initiate primary immune responses by activating naive T cells and subsequently the effector cells of the adaptive immune system. Accordingly, dendritic cells play an

essential role in such conditions as autoimmune diseases, graft rejection, human immunodeficiency virus infection and the generation of T cell-dependent antibodies. The Chinese herb *Tripterygium Wilfordii Hook F* (TWHF) has been used in traditional Chinese medicine for the treatment of autoimmune diseases. A major active component isolated from TWHF is triptolide and it suppresses T lymphocyte activation.

The present invention relates to compositions and methods for inhibiting the activation of dendritic cells. The methods are useful for therapies related to conditions mediated by the activation of dendritic cells with an effective amount of a composition comprising triptolide or analog or derivative thereof, thereby inhibiting activation of dendritic cells.

In addition to licensing, the technology is available for further development through collaborative research opportunities with the inventors.

Wild-Type and DNA Polymerase Beta Null Mouse Embryotic Fibroblast Cell Lines Harboring a lambda-LIZ Transgene

Robert W. Sobol, Jr., Samuel H. Wilson (NIEHS).

DHHS Reference No. E–049–2000/0—Research Tool.

Licensing Contact: Marlene Shinn-Astor; (301) 435–4426; *shinnm@mail.nih.gov.*

Of great utility in toxicology and DNA repair research are knockout mice with cell lines enabling one to evaluate generations of gene mutations as a direct function of base excision repair. Of particular importance are lambda-LIZ transgenes. Likewise, wild-type and beta-pol null cell lines are equally important. While there exist cell lines carrying the lambda-LIZ transgene, only wild-type cells are currently available. And while wild-type and beta-pol null cell lines exist, none carry the lambda-LIZ transgene.

The present cell line incorporates both of these beneficial properties. These cell lines were created by crossing a transgenic mouse with multiple copies of the lambda-LIZ transgene with a mouse with but a single copy of the DNA polymerase beta. Rebreeding offspring produced cells of both wild type and beta-pol null genotype. The utility of these cells stem from the deficiency in base excision repair as a result of the null mutation in the DNA polymerase beta gene.

Also available for licensing are cell lines created using: Ung KO mice + lambda-LIZ transgene; Aag KO mice + lambda-LIZ transgene; PMS–2 KO mice + lambda-LIZ transgene; Pol-beta/Aag double KO mice + lambda-LIZ transgene; Pol-beta/PMS–2 double KO mice + lambda-LIZ transgene; Aag/PMS–2 double KO mice + lambda-LIZ transgene.

Dated: April 11, 2005.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 05–7849 Filed 4–19–05; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasions of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Brain Tumors.

Date: June 14, 2005.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel & Executive Mtg Ctr. Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Claudio A. Dansky Ullmann, MD, Scientific Review Administrator, National Cancer Institute, Division of Extramural Activities, Grants Review Branch, Research Programs Review Branch, 6116 Executive Blvd., RM 8119, MSC 8328, Bethesda, MD 20892, 301–451–4761, *ullmannc@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support, 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: April 12, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–7861 Filed 4–19–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Innovations in Cancer Sample Preparations.

Date: June 20, 2005.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Kenneth L. Bielat, PhD, Scientific Review Administrator, Division Of Extramural Activities, National Cancer Institute, National Institute of Health, 6116 Executive Boulevard, Room 7147, Bethesda, MD 20892, (301) 496–7576, *bielatk@mail,nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: April 12, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–7862 Filed 4–19–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Chemical Optimization and Structure-Activity Relationship.

Date: May 19, 2005.

Time: 10 a.m. to 12 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6130 Executive Blvd., Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Sonya Roberson, PhD, Health Scientist Administrator, Program Coordination and Referral Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Blvd., Room 8045, Bethesda, MD 20892, 301–496–2378, *robersos@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: April 12, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–7863 Filed 4–19–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: national Cancer Institute Special Emphasis Panel, Circulating Cells and DNA in Cancer Detection.

Date: May 24, 2005.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Kenneth L. Bielat, PhD, Scientific Review Administrator, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 7147, Bethesda, MD 20892, (301) 496–7576, *bielatk@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: April 12, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–7864 Filed 4–19–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Complimentary & Alternative Medicine; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Complementary and Alternative Medicine Special Emphasis Panel, Regional Translational Research Centers RTRFC.

Date: May 23–24, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Carol Pontzer, PhD, Scientific Review Administrator, National Center for Complementary and Alternative Medicine, 6707 Democracy Blvd., Bethesda, MD 20892.

Name of Committee: National Center for Complementary and Alternative Medicine Special Emphasis Panel, Training and Education Special Emphasis Panel.

Date: July 8, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Laurie Friedman Donze, PhD, Scientific Review Administrator, National Center for Complement. & Alt. Medicine, National Institutes of Health, 6707 Democracy Blvd. Suite 401, Bethesda, MD 20892, 301–402–1030, *donzel@mail.nih.gov.*

Dated: April 12, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–7860 Filed 4–19–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Heart, Lung, and Blood Institute Special Emphasis Panel, April 5, 2005, 2 p.m. to April 5, 2005, 5 p.m. National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD, 20892 which was published in the **Federal Register** on March 30, 2005, FR70: 16293.

This meeting will be held on April 26, 2005 instead of April 5, as previously advertised. The meeting is closed to the public.

Dated: April 13, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–7852 Filed 4–19–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, National Institute of Neurological Disorders and Stroke.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute of Neurological Disorders and Stroke, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, National Institute of Neurological Disorders and Stroke.

Date: May 15–17, 2005.

Closed: May 15, 2005, 7 p.m. to 10 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.

Open: May 16, 2005, 8:30 a.m. to 11:45 a.m.

Agenda: To discuss program planning and program accomplishments.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Conference Room A, Rockville, MD 20852.

Closed: May 16, 2005, 10:45 a.m. to 1 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Conference Room A, Rockville, MD 20852.

Open: May 16, 2005, 1 p.m. to 2:45 p.m.

Agenda: To discuss program planning and program accomplishments.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Conference Room A, Rockville, MD 20852.

Closed: May 16, 2005, 2:45 p.m. to 3:40 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Conference Room A, Rockville, MD 20852.

Closed: May 16, 2005, 5 p.m. to 7 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.

Closed: May 17, 2005, 8:30 a.m. to 11:30 a.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.

Contact Person: Story C. Landis, PhD, Director, National Institute of Neurological Disorders and Stroke, NIH, 31 Center Drive, Building 31, Room 8A52, Bethesda, MD 20892, 301–496–9746, *landiss@ninds.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: April 13, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–7851 Filed 4–19–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Unsolicited Career Development Awards.

Date: April 27, 2005.

Time: 1:30 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge 6700, 6700B Rockledge Drive, Bethesda, MD 20817, (Telephone Conference Call).

Contact Person: Roberta Binder, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID/NIH/DHHS, Room 3130, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, (301) 496–7966, *rb169n@nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: April 13, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–7853 Filed 4–19–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Dental & Craniofacial Research Special Emphasis Panel, 05–68, Review of R21.

Date: May 10, 2005.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: H. George Hausch, PhD, Acting Director, 45 Center Drive, Natcher Building, RM. 4AN44F, National Institute of Health, Bethesda, MD 20892, (301) 594–2904, george_hausch@nih.gov.

Name of Committee: National Institute of Dental & Craniofacial Research Special Emphasis Panel, 05–64, Review of R21s.

Date: May 25, 2005.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Rebecca Roper, MS, MPH, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, National Inst. of Dental & Craniofacial Research, National Institutes of Health, 45 Center Dr., room 4AN32E, Bethesda, MD 20892, (301) 451–5096.

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: April 12, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–7854 Filed 4–19–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Biomedical Imaging and Bioengineering; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentabale material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Biomedical Imaging and Bioengineering Special Emphasis Panel Loan Repayment Proposals.

Date: May 5, 2005.

Time: 12 p.m. to 1:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Prabha L. Atreya, PhD, Scientific Review Administrator, Office of Scientific Review, National Institute of Biomedical Imaging and Bioengineering, Bethesda, MD 20892, (301) 496–8633, *atreyapr@mail.nih.gov.*

Dated: April 12, 2005.

LaVerne Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–7859 Filed 4–19–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel, Targeted Hyper-Reinnervation to Improve Myoelectric Prosthesis in Women.

Date: May 10, 2005.

Time: 12 p.m. to 2 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6100 Executive Boulevard, Room 5B01, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Hameed Khan, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5B01, Bethesda, MD 20892, (301) 435–6902, *khanh@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: April 12, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–7865 Filed 4–19–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory General Medical Sciences Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other resonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose

confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory General Medical Sciences Council.

Date: May 19–20, 2005.

Closed: May 19, 2005, 8:30 a.m. to 10:30 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, Conference Rooms E1 and E2, 9000 Rockville Pike, Bethesda, MD 20892.

Open: May 19, 2005, 10:30 a.m. to 5 p.m.

Agenda: For the discussion of program policies and issues, opening remarks, report of the Director, NIGMS, new potential opportunities and other business of Council.

Place: National Institutes of Health, Natcher Building, Conference Rooms E1 and E2, 9000 Rockville Pike, Bethesda, MD 20892.

Closed: May 20, 2005 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, Conference Rooms E1 and E2, 9000 Rockville Pike, Bethesda, MD 20892.

Contact Person: Ann A. Hagan, PhD, Associate Director, Division of Extramural Activities, 45 Center Drive, Room 2AN24G, MSC6200, Bethesda, MD 20892–6200, (301) 594–3910, *hagana@nigms.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interetsed person.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

Information is also available on the Institute's/Center's home page: *http://www.nigms.nih.gov/about/advisory_council.html,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: April 12, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–7866 Filed 4–19–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Immune Function & Biodefense in Children, Elderly & Immunocompromised Populations.

Date: May 2–3, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate contract proposals.

Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Kaleidoscope Room, Washington, DC 20007.

Contact Person: Priti Mehrotra, PhD, Scientific Review Administrator, Division of Extramural Activities, NIAID/NIH, 6700B Rockledge Drive, Room 2100, Bethesda, MD 20892–7616, (301) 496–2550, *pm158b@.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Review of an Unsolicited P01 Application.

Date: May 16, 2005.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Quirijn Vos, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID/NIH/DHHS, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, (301) 496–2550, *qvos@niaid.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Review of an Unsolicited P01 Application.

Date: May 23, 2005.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Quirijn Vos, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID/NIH/DHHS, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, (301) 496–2550, *qvos@niaid.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: April 12, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–7867 Filed 4–19–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel, Review of Research Program Projects (P01s).

Date: May 12, 2005.

Time: 9 a.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Yan Z Wang, PhD., Scientific Review Administrator, National Institute of Arthritis and Musculoskeletal and Skin Diseases, 6701 Democracy Blvd., Suite 820, Bethesda, MD 20892, (301) 594–4957.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: April 12, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–7868 Filed 4–19–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel, Review of Research Project (R01s).

Date: May 13, 2005.

Time: 10 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Van Z Wang, PhD, MD, Scientific Review Administrator, National Institute of Arthritis and Musculoskeletal and Skin Diseases, 6701 Democracy Blvd., Suite 820, Bethesda, MD 20892, (301) 594–4957, *wangy1@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: April 12, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–7869 Filed 4–19–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meeting.

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, ''Real-time Data Collection Utilizing Automated Speech Recognition Technologies''.

Date: May 17, 2005.

Time: 9 a.m. to 12 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6101 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Lyle Furr, Contract Review Specialist, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 220, MSC 8401, 6101 Executive Boulevard, Bethesda, MD 20892–8401, (301) 435–1439, *lf33c.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health, HHS)

Dated: April 12, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–7870 Filed 4–19–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Chid Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel, Magnitude Estimation by Humans and Nonhuman Primates.

Date: April 26, 2005.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Boulevard, Room 5B01, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Marita R. Hopmann, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, 6100 Building, Room 5B01, Bethesda, MD 20892, (301) 435–6911, *hopmannm@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: April 11, 2005.

Anna P. Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–7872 Filed 4–19–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, February 7, 2005, 11 a.m. to February 7, 2005, 12:30 p.m., National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD, 20892 which was published in the **Federal Register** on January 12, 2005, 70 FR 2179.

The meeting has been changed to April 25, 2005 from 4 p.m. to 4:30 p.m. The location remains the same. The meeting is closed to the public.

Dated: April 12, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–7873 Filed 4–19–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Council on Aging.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council on Aging.

Date: May 24–25, 2005.

Closed: May 24, 2005, 3 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, Building 31, Conference Room 6, 9000 Rockville Pike, Bethesda, MD 20892.

Open: May 25, 2005, 8 a.m. to 1:45 p.m.

Agenda: Call to Order; Task Force on Minority Aging Research Report; Working Group on Program Report; and Program Highlights.

Place: National Institutes of Health, Building 31, Conference Room 6, 9000 Rockville Pike, Bethesda, MD 20892.

Contact Person: Miriam F. Kelty, PhD, Director, Office of Extramural Affairs, National Institute on Aging, National Institutes of Health, 7201 Wisconsin Avenue, Suite 2C218, Bethesda, MD 20892, 301–496–9322.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

Information is also available on the Institute's/Center's home page: *http://www.nih.gov/nia/naca/,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: April 11, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–7874 Filed 4–19–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel Loan Repayment.

Date: May 2, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review nad evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, 2C212, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: William Cruce, PhD, Health Scientist Administrator, Scientific Review Office, National Institute on Aging, National Institutes of Health, Room 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20814, 301–402–7704, *crucew@nia.nih.gov.*

This notice is being published less than 15 days proir to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Aging Special Emphasis Panel. Multiple System Aging Processes—A2.

Date: May 3, 2005.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, 2C212, Bethesda, MD 20814, (Telephone Conference Call).

Contact Person: Jon Rolf, PhD, Health Scientist Administrator, Scientific Review Office, National Institutes of Health, National Institute on Aging, 7201 Wisconsin Avenue, Room 2C212, Bethesda, MD 20814, 301–402–7703, *rolfj@nia.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Aging Special Emphasis Panel Energy Metabolism & Aging in Non-Human Primates.

Date: May 12, 2005.

Time: 10 a.m. to 1:15 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health/NIA, Gateway Building, 7201 Wisconsin Avenue, 2C212, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Alfonso R. Latoni, PhD, Scientific Review Administrator, Scientific Review Office, National Institute on Aging, National Institutes of Health, 7201 Wisconsin Avenue, Room 2C212, Bethesda, MD 20892, 301–496–9666, *latonia@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: April 12, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–7875 Filed 4–19–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the National Diabetes and Digestive and Kidney Diseases Advisory Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasions of personal privacy.

Name of Committee: National Diabetes and Digestive and Kidney Diseases Advisory Council.

Date: May 19, 2005.

Open: 8:30 a.m. to 10 a.m.

Agenda: To present the Director's Report and other scientific presentations.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Salon A–C of the Grand Ballroom, Bethesda, MD 20814.

Closed: 1:30 p.m. to 1:45 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Salon A–C of the Grand Ballroom, Bethesda, MD 20814.

Open: 1:45 p.m. to 5 p.m.

Agenda: Continuation of the Director's Report and other scientific presentations.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Salon A–C of the Grand Ballroom, Bethesda, MD 20814.

Contact Person: Robert D. Hammond, PhD, Director for Extramural Activities, National Institute of Diabetes, and Digestive and Kidney Diseases, National Institutes of Health, 6707 Democracy Blvd., Room 715, MSC 5452, Bethesda, MD 20892–5452, 301–594–8834, *hammondr@extra.niddk.nih.gov.*

Name of Committee: National Diabetes and Digestive and Kidney Diseases Advisory Council, Diabetes, Endocrinology, Metabolic Diseases Subcommittee.

Date: May 19, 2005.

Open: 10:30 a.m. to 11:30 a.m.

Agenda: To present the Division's scientific and planning activities.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Salon A–C of the Grand Ballroom, Bethesda, MD 20814.

Closed: 11:30 a.m. to 1:15 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Salon A–C of the Grand Ballroom, Bethesda, MD 20814.

Contact Person: Robert D. Hammond, PhD, Director for Extramural Activities, National Institute of Diabetes, and Digestive and Kidney Diseases, National Institutes of Health, 6707 Democracy Blvd., Room 715, MSC 5452, Bethesda, MD 20892–5452, 301–594–8834, *hammondr@extra.niddk.nih.gov.*

Name of Committee: National Diabetes and Digestive and Kidney Diseases Advisory Council Diseases Nutrition Subcommittee.

Date: May 19, 2005.

Open: 10:30 a.m. to 11:30 a.m.

Agenda: To review the Division's scientific and planning activities.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Rockville/Chevy Chase Room, Bethesda, MD 20814.

Closed: 11:30 a.m. to 1:15 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Rockville/Chevy Chase Room, Bethesda, MD 20814.

Contact Person: Robert D. Hammond, PhD, Director for Extramural Activities, National Institute of Diabetes and Digestive and Kidney Diseases, National Institutes of Health, 6707 Democracy Blvd., Room 715, NSC 5452, Bethesda, MD 20892–5452, 301–594–8834, *hammondr@extra.niddk.nih.gov.*

Name of Committee: National Diabetes and Digestive and Kidney Diseases Advisory Council Kidney, Urologic, and Hematologic Diseases Subcommittee.

Date: May 19, 2005.

Open: 10:30 a.m. to 11:30 a.m.

Agenda: To review the Division's scientific and planning activities.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Rockville/Chevy Chase Room, Bethesda, MD 20814.

Closed: 11:30 a.m. to 1:15 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Rockville/Chevy Chase Room, Bethesda, MD 20814.

Contact Person: Robert D. Hammond, PhD, Director for Extramural Activities, National Institute of Diabetes and Digestive and Kidney Disease, National Institutes of Health, 6707 Democracy Blvd, Room 715, MSC 5452, Bethesda, MD 20892–5452, 301–594–8834, *hammondr@extra.niddk.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

Information is also available on the Institute's/Center's home page: *http://www.niddk.nih.gov/fund/divisions/DEA/Council/coundesc.htm.,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: April 12, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–7876 Filed 4–19–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, NIDDK.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute of Diabetes and Digestive and Kidney Diseases, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, NIDDK.
Date: May 25, 2005.
Time: 8 a.m. to 8:30 a.m.
Agenda: Introductions and Overview.
Place: National Institutes of Health, Building 5, Room 127, Bethesda, MD 20892.
Closed: 8:30 a.m. to 6 p.m.
Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.
Place: National Institutes of Health, Building 5, Room 127, Bethesda, MD 20892.
Contact Person: Marvin C. Gershengorn, MD, Scientific Director, Division of Intramural Research, National Institute of Diabetes and Digestive and Kidney Diseases, National Institutes of Health, 9000 Rockville Pike, Bldg. 10, Rm. 9N222, Bethesda, MD 20892, (301) 496–4129.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: April 11, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–7877 Filed 4–19–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee At, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasions of personal privacy.

Name of Committee: Biomedical Library and Informatics Review Committee.
Date: June 9–10, 2005.
Time: June 9, 2005, 8 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: National Library of Medicine, Building 38, Second Floor, Board Room, 8600 Rockville Pike, Bethesda, MD 20892.
Time: June 10, 2005, 8 a.m. to 12:30 p.m.
Agenda: To review and evaluate grant applications.
Place: National Library of Medicine, Building 38, Second Floor, Board Room, 8600 Rockville Pike, Bethesda, MD 20892.
Contact Person: Hua-Chuan Sim, MD, Health Science Administrator, National Library of Medicine, Extramural Programs, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20892.

(Catalogue of Federal Domestic Assistance Program Nos. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: April 12, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–7871 Filed 4–19–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center For Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Neurodegeneration, Neurogenesis, and Regeneration.
Date: April 14, 2005.
Time: 4 p.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Lawrence Baizer, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4152, MSC 7850, Bethesda, MD 20892, (301) 435–1257, *baizerl@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Type 1 Diabetes.
Date: April 19, 2005.
Time: 1 p.m. to 2:30 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Stephen M. Nigida, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4212, MSC 7812, Bethesda, MD 20892, 301–435–1222, *nigidas@csr,nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Building Interdisciplinary Research Careers in Women's Health.
Date: May 10–11, 2005.
Time: 8 a.m. to 3 p.m.
Agenda: To review and evaluate grant applications.
Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.
Contact Person: Ray Bramhall, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6046 F, MSC 7892, Bethesda, MD 20892, 910–458–1871, *bramhair@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, New Myocytes.
Date: May 17, 2005.
Time: 2:30 p.m. to 3:30 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Russell T. Dowell, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4128, MSC 7814, Bethesda, MD 20892, (301) 435–1850, *dowellr@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Program Project: Adolescent Health.
Date: May 19–20, 2005.
Time: 5 p.m. to 3 p.m.
Agenda: To review and evaluate grant applications.
Place: One Washington Circle Hotel, One Washington Circle, Washington, DC 20037.
Contact Person: Valerie Durrant, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3148, MSC 7770, Bethesda, MD 20892, (301) 435–3554, *durrantv@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institues of Health, HHS)

Dated: April 12, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–7855 Filed 4–19–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, April 27, 2005, 1 p.m. to April 27, 2005, 2 p.m., National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD, 20892 which was published in the **Federal Register** on April 7, 2005, 70 FR 17711.

The meeting will be held April 28, 2005. The meeting time and location remain the same. The meeting is closed to the public.

Dated: April 12, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–7856 Filed 4–19–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center For Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Epidemiology Member Conflict.

Date: April 18, 2005.

Time: 2:30 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Sandra L. Melnick, DRPH, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3028D, MSC 7770, Bethesda, MD 20892, 301–435–1251, *melnicks@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Model Systems and Functional Genomics in Innate Immunity and Inflammation.

Date: April 21, 2005.

Time: 1:30 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Tina McIntyre, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4202, MSC 7812, Bethesda, MD 20892, 301–594–6375, *mcintyrt@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Regulation of Cytokine Production.

Date: April 22, 2005.

Time: 1:30 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Tina McIntyre, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4202, MSC 7812, Bethesda, MD 20892, 301–594–6375, *mcintyrt@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Second Primary Tumor Prevention Inhibitors in Head and Neck Cancer.

Date: May 4, 2005.

Time: 2:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Morris I. Kelsey, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6208, MSC 7804, Bethesda, MD 20892 301–435–1718, *kelseym@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: April 12, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–7857 Filed 4–19–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, April 6, 2005, 1:30 p.m. to April 6 2005, 2:30 p.m., National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD, 20892 which was published in the **Federal Register** on March 30, 2005, 70 FR 16295–16296.

The meeting will be held April 28, 2005, from 12:30 p.m. to 1:30 p.m. The meeting location remains the same. The meeting is closed to the public.

Dated: April 12, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–7858 Filed 4–19–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: Human Anesthetic Formulation Based Upon Cyclodextrin Carriers

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: This is notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i), that the National Institutes of Health (NIH), Department of Health and Human Services, is contemplating the grant of an exclusive license worldwide to practice the invention embodied in U.S. Patent No. 6,407,079, entitled ''Pharmaceutical compositions containing drugs which are instable or sparingly soluble in water and methods for their preparation,'' to Jurox Pty Ltd., having a place of business in Rutherford, Australia. The field of use may be limited to the development of injectable anesthetic formulations containing

Alfaxalone-hydroxypropyl-beta cyclodextrin complex for use in humans. The United States of America has an interest in the patent rights of this invention.

DATES: Only written comments and/or application for a license, which are received by the NIH Office of Technology Transfer on or before July 19, 2005 will be considered.

ADDRESSES: Requests for a copy of the patent, inquiries, comments and other materials relating to the contemplated license should be directed to: Pradeep Ghosh, J.D., Ph.D., M.B.A., Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; Telephone: (301) 435–5282; Facsimile: (301) 402–0220; e-mail: *ghoshpr@mail.nih.gov.*

SUPPLEMENTARY INFORMATION: This technology relates to pharmaceutical compositions containing drugs that are instable or only sparingly soluble in water, and methods for their preparation. The compositions are characterized by increased water solubility and improved stability.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within 90 days from the date of this published Notice, NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Properly filed competing applications for a license filed in response to this notice will be treated as objections to the contemplated license. Comments and objections submitted in response to this notice will not be made available for public inspection, and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: April 11, 2005.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 05–7850 Filed 4–19–05; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS–2005–0035]

Border and Transportation Security Directorate Customs and Border Protection; Notice of Meeting of Departmental Advisory Committee on Commercial Operations of Customs and Border Protection and Related Functions (Commercial Operations Advisory Committee or COAC)

AGENCY: Office of the Assistant Secretary, Border and Transportation Security, DHS.

ACTION: Notice.

SUMMARY: The Departmental Advisory Committee on Commercial Operations of Customs and Border Protection and Related Functions (Commercial Operations Advisory Committee or COAC) will meet in open session. This notice announces the date, time, and location for the second meeting of the ninth term, and the expected agenda for its consideration.

DATES: The next meeting of the COAC will be held on Thursday, May 5, 2005, 9 a.m. to 1 p.m.

ADDRESSES: The meeting will be held in The Ronald Reagan International Trade Center, Pavillion Room, 1300 Pennsylvania Avenue, NW., Washington, DC 20229, telephone (202) 344–1440; facsimile (202) 344–1969.

FOR FURTHER INFORMATION CONTACT: Ms. Monica Frazier, Office of the Assistant Secretary for Border and Transportation Security, Department of Homeland Security, Washington, DC 20528, telephone (202) 282–8431; facsimile (202) 282–8504.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act (FACA), Pub. L. 92–463, as amended (5 U.S.C. App.1 *et seq.*), the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, Title IX, Section 9503(c), December 22, 1987, 100 Stat. 1330–381 (19 U.S.C. 2071 note), and under the Homeland Security Act of 2002, Pub. L. 107–297, November 26, 2002, 116 Stat. 2140, *et seq.* (6 U.S.C. 101, *et seq.*).

Draft Agenda: The COAC is expected to pursue the following agenda, which may be modified prior to the meeting:

1. Update on Maritime Transportation Security Act (MTSA) Subcommittee Follow-up Items.
2. Update on Department of Homeland Security (DHS) Organization and Customs and Border Protection (CBP) Strategic Plan.
3. Update on Security Subcommittee.
   a. Customs-Trade Partnership Against Terrorism (C–TPAT) Process.
   b. Advance Cargo Information.
   c. World Customs Organization (WCO) Framework.
4. Update on Creation of Infrastructure Subcommittee.
5. Update on Broker Confidentiality.
6. Update on Achieving Paperless Entry for Apparel and Textiles.
7. Update on International Trade Data Systems (ITDS).
8. Automation Issues.
   a. Automated Commercial Environment (ACE) funding and development schedule.
   b. Automated Commercial System (ACS) downtime.
9. Food and Drug Administration (FDA) Bioterrorism Act.
10. Focused Assessment Program.
11. Committee Administration.

Public Participation: You may submit comments, identified by DHS–____, 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.
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: Monica.Frazier@dhs.gov* When submitting comments electronically, please include DHS–____in the subject line of the message.
- *Mail:* Ms. Monica Frazier, Office of the Assistant Secretary for Border and Transportation Security, Department of Homeland Security, Washington, DC 20528, telephone (202) 282–8431; facsimile (202) 282–8504. To ensure proper handling, please reference DHS–____on your correspondence. This mailing address may also be used for paper, disk, or CD–ROM submissions.
- *Hand Delivery/Courier:* Ms. Monica Frazier, Office of the Assistant Secretary for Border and Transportation Security, Department of Homeland Security, Washington, DC 20528, telephone (202) 282–8431; facsimile (202) 282–8504.

This meeting is open to the public; however, participation in COAC deliberations is limited to COAC members, Homeland Security and Treasury Department officials, and persons invited to attend the meeting for special presentations. Since seating is limited, all persons attending this meeting should provide notice preferably by 2 p.m. e.s.t. on Thursday, April 28, 2005, to Ms. Monica Frazier, Office of the Assistant Secretary for Border and Transportation Security, Department of Homeland Security, Washington, DC 20528, telephone (202) 282–8431; facsimile (202) 282–8504.

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.* All comments received will be posted without change to *http://www.epa.gov/feddocket,* including any personal information provided.

Information on Services for Individuals with Disabilities: For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact Ms. Monica Frazier, Office of the Assistant Secretary for Border and Transportation Security, Department of Homeland Security, Washington, DC 20528, telephone (202) 282–8431; facsimile (202) 282–8504, as soon as possible.

Dated: April 18, 2005.

Elaine Dezenski,

Acting Assistant Secretary for Border and Transportation Security Policy and Planning.

[FR Doc. 05–8019 Filed 4–19–05; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[CGD–09–05–008]

Great Lakes Regional Waterways Management Forum

AGENCY: Coast Guard, DHS.

ACTION: Notice of meeting.

SUMMARY: ''The Great Lakes Regional Waterways Management Forum'' will hold a meeting to discuss various waterways management issues. Potential agenda items will include navigation, ballast water regulations, Automatic Identification Systems (AIS), waterways management, and discussions about the agenda for the next meeting. The meeting will be open to the public.

DATES: The meeting will be held June 21, 2005 from 1 p.m. to 5 p.m., and June 22, 2005 from 8 a.m. to 12 p.m. Comments must be submitted on or before June 17, 2005 to be considered at the meeting.

ADDRESSES: The meeting will be held at the U.S. Coast Guard Moorings, 1055 East Ninth Street, Cleveland, OH 44199. Any written comments and materials should be submitted to Commander (map), Ninth Coast Guard District, 1240 E. 9th Street, Room 2069, Cleveland, OH 44199.

FOR FURTHER INFORMATION CONTACT: LTjg Regan Blomshield (map-1), Ninth Coast Guard District, OH 44199, telephone (216) 902–6050. Persons with disabilities requiring assistance to attend this meeting should contact LTjg Blomshield.

SUPPLEMENTARY INFORMATION: The Great Lakes Waterways Management Forum identifies and resolves waterways management issues that involve the Great Lakes region. The forum meets twice a year to assess the Great Lakes region, assign priorities to areas of concern and identify issues for resolution. The forum membership has identified potential agenda items for this meeting that include: navigation, AIS, ballast water regulations, waterways management, and discussions about the agenda for the next meeting. The specific agenda is still under development. Additional topics of discussion are solicited from the public.

Dated: April 8, 2005.

Robert J. Papp Jr.,

Rear Admiral, U.S. Coast Guard, Commander, Ninth Coast Guard District Cleveland, Ohio.

[FR Doc. 05–7901 Filed 4–19–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Comment Request

ACTION: Request OMB emergency approval; Petition for nonimmigrant worker; Form I–129, edition (Rev. 12/10/2001).

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) has submitted the following information collection request utilizing emergency review and clearance in accordance with section 1320.13(a)(1)(ii) and (1)(2)(iii) of the Paperwork Reduction Act of 1995. The USCIS has determined that it cannot reasonably comply with the normal clearance procedures under this part because normal clearance procedures are reasonably likely to prevent or disrupt the collection of information. Emergency review and approval of this information collection will ensure that the collection may continue.

USCIS is requesting emergency clearance of the December 10, 2001 version of Form I–129, Petition for Nonimmigrant Worker until April 30, 2005. While USCIS has received OMB approval of the changes to the information collection required by the OAA, many members of the public have, in anticipation of the USCIS allocation, already prepared petitions for these new visas using the pre-amended Form I–129. In order to accommodate this segment of the public, USCIS seeks approval of the prior version of the Form I–129 to run concurrent with the new amended version until April 30, 2005. After that date approval of the old I–129 will expire and the new version of Form I–129 will be the only version approved for use.

USCIS is implementing the OAA and allocating the additional H–1B visas through rulemaking in the **Federal Register**. While that rulemaking will contain detailed filing instructions to the public, USCIS is aware that some members of the public may only see the form itself and not be aware of the rulemaking. To address this possibility, USCIS will post the information on the form download page on its Web site. This will ensure that no one will receive this form without instruction on the proper filing method.

All comments and/or questions pertaining to this pending request for emergency approval MUST be directed to OMB, Office of Information and Regulatory Affairs, 725–17th Street, NW., Suite 10235, Washington, DC 20503; Attention: Department of Homeland Security Desk Officer. Comments regarding the emergency submission of this information collection may also be submitted via facsimile to (202) 395–6974.

During this review, USCIS invites written comments and suggestions from the public and affected agencies concerning this information collection. Comments are encouraged and will be accepted until April 30, 2005. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other

technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

(5) Overview of this information collection:

(1) *Type of Information Collection: New collection of approved information collection.*

(2) *Title of the Form/Collection:* Petition for Nonimmigrant Worker.

(3) *Agency form number, if any and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–129. U.S. Citizenship and Immigration Services (Rev. 12/10/2001).

(4) *Affected public who will be asked or required to respond, as well as brief abstract:* Primary: Individuals or households. This form is used by an employer to petition for aliens to come to the U.S. temporarily to perform services, labor, and training or to request extensions of stay or changes in nonimmigrant status for nonimmigrant workers.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 368,948 responses at 2.75 hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 1,014,607 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard Sloan, Director, Regulatory Management Division, U.S. Department of Homeland Security, 111 Massachusetts Avenue NW., 3rd Floor, Washington, DC 20529.

If additional information is required contact: Stephen Cooper, Department Clearance Officer, United States Department of Homeland Security, Regional Office Building 3, 7th and D Streets, SW., Washington, DC 20530.

Dated: April 15, 2005.

Richard A. Sloan,

Director, Regulatory Management Division, U.S. Citizenship and Immigration Services.

[FR Doc. 05–7879 Filed 4–19–05; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF THE INTERIOR

Natural Resource Damage Assessment and Restoration Advisory Committee

AGENCY: Office of the Secretary—Natural Resource Damage Assessment and Restoration Program Office, Interior.

ACTION: Notice of establishment.

SUMMARY: This notice is published in accordance with Section 9(a) of the Federal Advisory Committee Act of 1972 (Public Law 92–463). Following consultation with the General Services Administration, notice is hereby given that the Secretary of the Interior has established the Natural Resource Damage Assessment and Restoration Advisory Committee. The Committee will provide advice and recommendations on issues related to the Department of the Interior's authorities, responsibilities and implementation of the natural resource damage provisions of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA—42 U.S.C. §§ 9601, *et seq.*), the Oil Pollution Act (OPA—33 U.S.C. 2701, *et seq.*), and the Clean Water Act (CWA—33 U.S.C. 1251, *et seq.*).

FOR FURTHER INFORMATION CONTACT: Frank DeLuise, Office of the Secretary, Natural Resource Damage Assessment and Restoration Program Manager, 1849 C Street, NW., Washington, DC, 20240, 202–208–4143.

Certification: I hereby certify that the Natural Resource Damage Assessment and Restoration Advisory Committee is in the public interest in connection with the performance of duties imposed on the Department of the Interior by the natural resource damage provisions of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA—42 U.S.C. 9601, *et seq.*), the Oil Pollution Act (OPA—33 U.S.C. 2701, *et seq.*), and the Clean Water Act (CWA—33 U.S.C. 1251, *et seq.*) .

Dated: April 12, 2005.

Gale A. Norton,

Secretary of the Interior.

[FR Doc. 05–7925 Filed 4–19–05; 8:45 am]

BILLING CODE 4310–RK–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–200–1220–DU]

Change in Off-Highway Vehicle (OHV) Designations; Closure of Public Lands to Recreational Target Shooting; and Implementation of Supplementary Rules Regarding Operation of Motorized Vehicles and Bicycles

AGENCY: Bureau of Land Management; Interior.

ACTION: Notice.

SUMMARY: This notice implements five decisions from the Gold Belt Travel Management Plan, approved August 18, 2004. The following decisions are effective immediately on certain public lands in El Paso, Fremont, Park, and Teller Counties, Colorado.

(1) A change in the OHV designation for the Penrose Commons area (3,200 acres) from ''open'' to OHV use to OHV use ''limited to designated roads and trails''.

(2) A change in the OHV designation for the Deer Haven area (4,900 acres) from ''closed'' to OHV use to OHV use ''limited to designated roads and trails''.

(3) The closure of approximately 11,000 acres of public lands to recreational target shooting. Licensed hunters in legitimate pursuit of game during the proper season with appropriate firearms, as defined by the Colorado Division of Wildlife, are exempt from this closure.

(4) A supplementary rule limiting motorized vehicle travel for parking, camping, and retrieving game to a maximum of 100 feet from designated roads and trails in the Gold Belt Travel Management Plan area (138,600 acres).

(5) A supplementary rule restricting mountain bikes to designated roads and trails in the Gold Belt Travel Management Plan area (138,600 acres).

The purpose of the change in designation, closure and supplementary rules is to prevent damage to public lands and resources, reduce user conflicts, protect public safety, and reduce vandalism to public and private property. The closure is made under the authority of 43 CFR 8364.1 and the supplementary rules are made under the authority of 43 CFR 8365.1–6.

DATES: Effective immediately and remaining in effect unless revised, revoked or amended.

ADDRESSES: Bureau of Land Management, Royal Gorge Field Office, 3170 East Main Street, Cañon City, Colorado 81212; telephone 719–269–8500.

FOR FURTHER INFORMATION CONTACT: Roy L. Masinton, Field Manager, or Leah Quesenberry, Outdoor Recreation Planner, at the above address and phone number.

SUPPLEMENTARY INFORMATION: The public lands affected by the change in designation, closure and supplementary rules are identified as follows:

Certain public lands located within the Gold Belt Travel Management Plan area in El Paso, Fremont, Park, and Teller Counties, Colorado

Colorado, Sixth Principal Meridian

T. 15 S., R. 70 W. through 72 W.
T. 16 S., R. 68 W. through 72 W.
T. 17 S., R. 68 W. through 72 W.
T. 18 S., R. 68 W. through 71 W.

These supplementary rules do not apply to emergency, law enforcement, and Federal or other government vehicles while being used for official or other emergency purposes, or to any other vehicle use that is expressly authorized or otherwise officially approved by BLM. Violation of order and rules is punishable by imprisonment for up to 12 months and/or a fine as defined in 18 U.S.C. 3571. This notice with detailed maps will be posted at the Royal Gorge Field Office.

Linda McGlothlen,

Acting Field Manager.

[FR Doc. 05–7815 Filed 4–19–05; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

National Park Service

Special Resource Study; San Gabriel Watershed and Mountains, Los Angeles and Orange Counties, CA; Notice of Extension of Public Scoping Period

SUMMARY: Pursuant to § 102(2)(C) of the National Environmental Policy Act of 1969 (P.L. 91–190 as amended), and as authorized by Pub. L. 108–042, the National Park Service, Department of the Interior, has initiated public scoping for a study of the San Gabriel River surrounding watershed and San Gabriel Mountains so as to evaluate significance of the area's resources and assess the possible suitability and feasibility of the area to be considered for inclusion in the National Park System. Originally the public scoping period was set to conclude on April 19, 2005 (per **Federal Register** notice dated January 19, 2005). In deference to public interest expressed to date from local governmental agencies, organizations, and other interested parties, the scoping period has been extended.

SUPPLEMENTARY INFORMATION: Interested individuals, organizations, and agencies are encouraged to provide written comments—to be considered any response must now be postmarked or transmitted no later than *May 20, 2005.* At this time five public meetings are scheduled to be held during March 18–24; complete details including times and locations are available at *http://www.nps.gov/pwro/sangabriel.*

All written responses should be addressed to the National Park Service, Attn: San Gabriel SRS, 1111 Jackson St., Ste. 700, Oakland, CA 94607 (or may be sent electronically in care of *pwr_sangabriel@nps.gov*). If individuals submitting comments request that their name or/and address be withheld from public disclosure, it will be honored to the extent allowable by law. Such requests must be stated prominently in the beginning of the comments. There also may be circumstances wherein the NPS will withhold a respondent's identity as allowable by law. As always NPS will make available to public inspection all submissions from organizations or businesses and from persons identifying themselves as representatives or officials of organizations and businesses, and, anonymous comments may not be considered.

Availability of the pending draft study for review and comment will be announced by local and regional news media, the above listed website, and direct mailing. At this time it is anticipated that the draft study will be released by late 2006 or early 2007 for public review and comment.

Dated: March 11, 2005.

George J. Turnbull,

Acting Regional Director, Pacific West Region.

[FR Doc. 05–7913 Filed 4–19–05; 8:45 am]

BILLING CODE 4312–52–M

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Availability for a Final Environmental Impact Statement (FEIS) for the Feasibility Study on the Preservation of Civil War Battlefields and Related Historic Sites Along the Vicksburg Campaign Trail (VCT) in Arkansas, Kentucky, Louisiana, Mississippi, and Tennessee

SUMMARY: Pursuant to section 102(2) of the National Environmental Policy Act of 1969 and National Park Service (NPS) policy in Director's Order Number 12 (Conservation Planning, Environmental Impact Analysis, and Decision-making), the NPS announces the availability of a FEIS for the Feasibility Study on the Preservation of Civil War Battlefields and Related Historic Sites along the VCT in Arkansas, Kentucky, Louisiana, Mississippi, and Tennessee. The Feasibility Study examines almost 500 sites with a view to how they might best be preserved and linked.

ADDRESSES: Limited numbers of copies of the FEIS/Feasibility Study are available from Harlan Unrau, National Park Service, Denver Service Center—Planning, P.O. Box 25287, 12795 West Alameda Parkway, Denver, CO 80225–0287, or by calling (303)–969–2254. An electronic copy of the FEIS/Feasibility Study is available on the Internet at *http://www.nps.gov/vick.*

SUPPLEMENTARY INFORMATION: The Feasibility Study identified approximately 500 sites in five states that were associated with the Vicksburg Campaign. The study then evaluated and rated each site according to criteria established by the Civil War Sites Advisory Commission Report on the Nation's Civil War Battlefields (1993); sites were rated as Tier One (Decisive/Major), Tier Two (Formative), and Tier Three (Limited). As of May 2003, 19 Tier One, 26 Tier Two, 131 Tier Three, and 315 associated sites had been identified, for a total of 491 sites included in the VCT Feasibility Study.

The FEIS describes and analyzes the environmental impacts of three alternatives, including a no action alternative, for the future management direction of the VCT Initiative. NPS Preferred Alternative is Alternative C—Comprehensive Preservation. The intent of the proposed action is to link all sites associated with the VCT in a formally designated VCT Initiative. Legislation would be needed to establish the VCT Initiative, modeled after the legislation establishing the Underground Railroad Network to Freedom program.

Emphasis would be placed on protection of all sites associated with the VCT that have been recognized as being nationally significant, *i.e.,* the Tier One Sites, through acquisition in fee or easement by Federal, State, or local agencies, and private organizations. It also anticipates that three of the sites (Champion Hill, Port Gibson, and Fort Heiman) encompassing approximately 2,000 acres could be added to the National Park System as boundary adjustments at existing units if authorized by Congress. In other cases the NPS could assist other managing authorities in the protection and preservation of other Tier One sites (*e.g.,* Fort Pillow).

Protection of the Tier One sites would be part of a comprehensive effort that

extends to the Tier Two and Three sites as well. For the Tier Two and Three sites, emphasis would be placed on protecting significant resource values through cooperation with public and private landowners to encourage compatible uses. Only if owners offered to sell and State, local, or private entities had funds available, would acquisition of fee or easement be considered.

The VCT Initiative would be established through congressional action with an overall management entity/advisory committee supplemented with working task forces from each State.

The draft Environmental Impact Statement for the VCT was released to the public on April 26, 2004. The public comment period ended June 24, 2004. No substantive comments were received on the draft document; consequently, no changes were made to the alternatives or environmental consequences.

FOR FURTHER INFORMATION CONTACT: Superintendent, Vicksburg National Military Park, 3201 Clay Street, Vicksburg, MS 39183, (601) 636–0583, or Harlan Unrau, National Park Service, Denver Service Center—Planning, P.O. Box 25287, 12795 W. Alameda Parkway, Denver, CO 80225–0287, (303) 969–2254.

The responsible official for this FEIS is Patricia A. Hooks, Regional Director, Southeast Region, National Park Service, 100 Alabama Street SW., 1924 Building, Atlanta, Georgia 30303.

Dated: February 1, 2005.

Patricia A. Hooks,

Regional Director, Southeast Region.

[FR Doc. 05–7912 Filed 4–19–05; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

Wekiva River System Advisory Management Commission Meeting

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of meeting.

SUMMARY: This notice announces a May 3, 2005 initial meeting of the Wekiva River System Advisory Management Commission.

DATES: The meeting will be held Tuesday, May 3, 2005 at 7 p.m.

ADDRESSES: The meeting will be held at the Wekiwa Springs State Park, Youth Camp Classroom, 1800 Wekiwa Circle, Apopka, FL 32712. Wekiwa Springs State Park is located off Interstate 4 at exit 49. Take State Road 434 West to Wekiwa Springs Rd. Call (407) 884–2006 or visit *http://www.floridastateparks.org/wekiwasprings* for additional information on this facility.

FOR FURTHER INFORMATION CONTACT: Jamie Fosburgh, Rivers Program Manager, Northeast Region—Boston, 15 State Street, Boston, MA 02109, telephone (617) 223–5191.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public. The agenda will include: Introductions; Review of Commission Charter and Purpose; Review of Management Plan Scope and Purpose; Commission Operating Logistics; and related topics. Any member of the public may file with the Commission a written statement concerning agenda items. The statement should be addressed to the Wekiva River System Advisory Management Commission, National Park Service, 15 State Street, Boston, MA 02109.

The Wekiva River System Advisory Management Commission was established by Pub. L. 106–299 to assist in the development of the comprehensive management plan for the Wekiva River System and provide advice to the Secretary in carrying out management responsibilities of the Secretary under the Wild and Scenic Rivers Act (16 U.S.C. 1274).

Dated: April 6, 2005.

Jamie Fosburgh,

Rivers Program Manager.

[FR Doc. 05–7914 Filed 4–19–05; 8:45 am]

BILLING CODE 4312–52–M

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before March 26, 2005. Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St. NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St. NW., 8th floor, Washington DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by May 5, 2005.

Carol D. Shull,

Keeper of the National Register of Historic Places.

District of Columbia

District of Columbia

Rock Creek and Potomac Parkway Historic District, (Parkways of the National Capital Region MPS) Rock Creek and Potomac Parkway, Washington, 05000367

Florida

Volusia County

Tarragona Tower, Tarragona Way and International Speedway Blvd., Daytona Beach, 05000368

Louisiana

East Feliciana Parish

Bank of Slaughter, 3323 Church St., Slaughter, 05000369

Missouri

Jackson County

Hiland Telephone Exchange Building, 1020 E. 63rd St., Kansas City, 05000373

Woolworth, F.W., Building, 3120–3122 Troost Ave., Kansas City, 05000372

St. Louis County

Hi-Pointe—De Mun Historic District, Roughly bounded by S. Skinker Blvd., Clayton Rd., Seminary Place, De Mun Ave., and Northwood Ave., Clayton, 05000370

St. Louis Independent City

Lindenwood School, 2815 McCausland Ave., St. Louis (Independent City), 05000371

New Jersey

Union County

Baltusrol Golf Club, 201 Shunpike Rd., Springfield, 05000374

North Carolina

Buncombe County

Smith, Whitford G., House, 263 Haywood St., Asheville, 05000375

Carteret County

Salter—Battle Hunting and Fishing Lodge, Sheep Island, Ocracoke, 05000381

Cumberland County

Capitol, The, 126 Hay St., Fayetteville, 05000376

Greene County

Zachariah School, NC 1239, 0.6 mi. S o NC 1244, Wooten's Crossroads, 05000377

Guilford County

Wilson, Lucy and J. Vassie, House, 425 Hillcrest Dr., High Point, 05000378

Johnston County

Moore, Walter R. and Eliza Smith, House, 3919 Raleigh Rd., Clayton, 05000379

Ohio

Cuyahoga County

Rockefeller Park and Cleveland Cultural Gardens Historic District, Roughly bounded by Mt. Sinai Rd., East Boulevard, Conrail Tracks, and Ansel Rd., Cleveland, 05000382

Oregon

Deschutes County

Drake Park Neighborhood Historic District, Roughly bounded by Broadway St., Riverside Blvd., Turnalo Ave., Franklin Ave., Bend, 05000380

Texas

Fannin County

Rayburn, Sam, Library and Museum, 800 W. Sam Rayburn Dr., Bonham, 05000386

Gillespie County

Cherry Spring School, 5973 RM 2323, Fredericksburg, 05000389
Crabapple School, 14671 Lower Crabapple Rd., Fredericksburg, 05000390
Lower South Grape Creek School, 10273 E U.S. 290, Fredericksburg, 05000391
Luckenbach School, 3566 Luckenbach Rd., Fredericksburg, 05000392
Meusebach Creek School, 515 Kuhlmann Rd., Fredericksburg, 05000393
Nebgen School, 1718 N. Grape Creek Rd., Fredericksburg, 05000394
Rheingold School, 334 Rheingold School Rd., Fredericksburg, 05000388
Williams Creek School, 5501 South RM 1623, Stonewall, 05000384
Willow City School, 2501 RM 1323, Willow City, 05000385

Texas

Harris County

Macatee, Leonard W., House, 1220 Southmore Blvd., Houston, 05000387

Upshur County

O'Bryne, John and Eva, House, FM 1844, 0.7 mi. E of U.S. 271, Union Grove, 05000383

Virginia

Fauquier County

Remington Historic District, Area including Bowen St., N. Church St., N. Franklin St., N. John Stone St., Main St., S. Mill St. Sumerduck Rd. Tinpot, Remington, 05000395

West Virginia

Greenbrier County

Organ Cave, WV 63, 0.5 mi of jct. U.S. 219, Ronceverte, 05000397
Ronceverte Historic District, Roughly along Main St., Pochantas, Monroe, and Greenbrier, Ronceverte, 05000396

Hampshire County

District Parsonage, Old, 351 N. Hight St., Romney, 05000398

McDowell County

Ashland Company Store, (Coal Company Stores in McDowell County MPS) WV 17, Ashland, 05000399

Mercer County

Bramwell Additions Historic District (Boundary Increase), Parts of Bluestone Ave., Clifton St., Renova St., Simmons Ave., Simmons St. and Spring St., Bramwell, 05000400

[FR Doc. 05–7837 Filed 4–19–05; 8:45 am]

BILLING CODE 4312–51–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701–TA–202, 731–TA–103, and 731–TA–514 (Second Review)]

Cotton Shop Towels From Bangladesh, China, and Pakistan

AGENCY: United States International Trade Commission.

ACTION: Termination of five-year reviews.

SUMMARY: The subject five-year reviews were initiated in January 2005 to determine whether revocation of the countervailing duty order on cotton shop towels from Pakistan and the antidumping duty orders on cotton shop towels from Bangladesh and China would be likely to lead to continuation or recurrence of material injury to a domestic industry. On April 11, 2005, the Department of Commerce published notice that it was revoking the orders effective February 17, 2005 because ''no domestic interested party responded to the sunset review notice of initiation by the applicable deadline'' (70 FR 18362). Accordingly, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)), the subject reviews are terminated.

EFFECTIVE DATE: February 17, 2005.

FOR FURTHER INFORMATION CONTACT: Robert Carpenter (202–205–3172), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*).

Authority: These reviews are being terminated under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.69 of the Commission's rules (19 CFR 207.69).

Issued: April 15, 2005.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 05–7929 Filed 4–19–05; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–814 (Review)]

Creatine Monohydrate From China

AGENCY: United States International Trade Commission.

ACTION: Termination of five-year review.

SUMMARY: The subject five-year review was initiated in January 2005 to determine whether revocation of the antidumping duty order on creatine monohydrate from China would be likely to lead to continuation or recurrence of material injury to a domestic industry. On April 11, 2005, the Department of Commerce published notice that it was revoking the order effective February 4, 2005 because ''the domestic interested parties did not participate in this sunset review'' (70 FR 18366). Accordingly, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)), the subject review is terminated.

EFFECTIVE DATE: February 4, 2005.

FOR FURTHER INFORMATION CONTACT: Robert Carpenter (202–205–3172), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*).

Authority: This review is being terminated under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.69 of the Commission's rules (19 CFR 207.69).

Issued: April 15, 2005.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 05–7928 Filed 4–19–05; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–279 and 347 (Second Review)]

Malleable Cast Iron Pipe Fittings From Japan and Korea

AGENCY: United States International Trade Commission.

ACTION: Termination of five-year reviews.

SUMMARY: The subject five-year reviews were initiated in January 2005 to determine whether revocation of the antidumping duty orders on malleable cast iron pipe fittings from Japan and Korea would be likely to lead to continuation or recurrence of material injury to a domestic industry. On April 11, 2005, the Department of Commerce published notice that it was revoking the orders effective February 28, 2005 because ''the domestic interested parties did not participate in this sunset review'' (70 FR 18368). Accordingly, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)), the subject reviews are terminated.

EFFECTIVE DATE: February 28, 2005.

FOR FURTHER INFORMATION CONTACT: Robert Carpenter (202–205–3172), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*).

Authority: These reviews are being terminated under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.69 of the Commission's rules (19 CFR 207.69).

Issued: April 15, 2005.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 05–7927 Filed 4–19–05; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1089 (Preliminary)]

Certain Orange Juice From Brazil

Determination

On the basis of the record [1] developed in the subject investigation, the United States International Trade Commission (Commission) determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) (the Act), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Brazil of certain orange juice,[2] provided for in subheadings 2009.11.00, 2009.12.25, 2009.12.45, and 2009.19.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV).[3]

Commencement of Final Phase Investigation

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigation. The Commission will issue a final phase notice of scheduling, which will be published in the **Federal Register** as provided in section 207.21 of the Commission's rules, upon notice from the Department of Commerce (Commerce) of an affirmative preliminary determination in the investigation under section 733(b) of the Act, or, if the preliminary determination is negative, upon notice of an affirmative final determination in that investigation under section 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigation need not enter a separate appearance for the final phase of the investigation. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigation.

Background

On December 27, 2004, a petition was filed with the Commission and Commerce on behalf of Florida Citrus Mutual, Lakeland, FL; A. Duda & Sons (d/b/a Citrus Belle) Oviedo, FL; Citrus World, Inc., Lake Wales, FL; Peace River Citrus Products, Inc., Arcadia, FL;[4] and Southern Garden Citrus Processing Corp. (d/b/a Southern Gardens), Clewiston, FL, alleging that an industry in the United States is materially injured and threatened with material injury by reason of LTFV imports of certain orange juice from Brazil. Accordingly, effective December 27, 2004, the Commission instituted antidumping duty investigation No. 731–TA–1089 (Preliminary).

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of January 4, 2005 (70 FR 387, January 4, 2005). The conference was held in Washington, DC, on January 19, 2005, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on March 7, 2005, and its views were transmitted on March 14, 2005. The views of the Commission are contained in USITC Publication 3757 (February 2005), entitled Certain Orange Juice from Brazil: Investigation No. 731–TA–1089 (Preliminary).

Issued: April 15, 2005.

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] The imported product subject to this investigation is certain orange juice for transport and/or manufacturing, produced in two different forms: (1) Frozen orange juice in a highly concentrated form, referred to as frozen concentrated orange juice for further manufacturing (''FCOJM''); and (2) pasteurized single-strength orange juice which has not been concentrated, referred to as not-from-concentrate orange juice (''NFCOJ'').

[3] Vice Chairman Deanna Tanner Okun, Commissioner Jennifer A. Hillman, and Commissioner Daniel R. Pearson find two domestic like products in this investigation—FCOJM and NFCOJ. They determine that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of FCOJM from Brazil. They also determine that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury, or that the establishment of an industry in the United States is materially retarded, by reason of imports of NFCOJ from Brazil.

[4] On January 31, 2005, petitioners submitted a letter to the Commission modifying the petition to remove Peace River as a petitioner. In a letter sent to Commerce on January 27, 2005, Peace River stated that it opposes the petition until resolution of the ongoing sunset review of the existing order on frozen concentrated orange juice from Brazil. It reserves its right to change its position on the petition based on the outcome of the sunset review.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 05–7938 Filed 4–19–05; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–511]

In the Matter of Certain Pet Food Treats; Notice of Commission Decision Not To Review an Initial Determination Granting the Commission Investigative Attorney's Motion for Summary Determination of No Violation; Termination of Investigation as to One Respondent; Request for Written Submissions on Remedy, the Public Interest, and Bonding With Respect to a Respondent Found in Default

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's (''ALJ'') initial determination (''ID'') in the above-captioned investigation granting the Commission investigative attorney's (''IA'') motion for summary determination of no violation because of noninfingement of U.S. Design Patent No. 383,866 (''the '866 patent''). Notice is also hereby given that the Commission is requesting briefing on remedy, public interest, and bonding with respect to a respondent previously found in default.

FOR FURTHER INFORMATION CONTACT: Rodney Maze, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–3065. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: This patent-based section 337 investigation was instituted by the Commission based on a complaint filed by complainants Thomas J. Baumgartner and Hillbilly Smokehouse, Inc., both of Rogers, Arkansas (collectively ''complainants''). 69 FR 32044 (June 8, 2004). The complainants alleged violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain pet food treats by reason of infringement of the '866 patent. The complaint named six respondents including Pet Center, Inc. (''Pet Center'') of Los Angeles, California, and Tsingtao Shengrong Seafood, Inc. of China (''Tsingtao China''). The Commission has terminated the investigation as to four other respondents. No petitions for review of the ALJ's IDs were filed. On November 10, 2004, the ALJ found Tsingtao China in default (Order No. 8).

On January 31, 2005, the IA filed a motion for summary determination of noninfringement of the '866 patent with respect to Pet Center. The complainants filed an opposition to the IA's motion on February 11, 2005. On March 18, 2005, the ALJ issued an ID (Order No. 16) granting the IA's motion for summary determination. No petitions for review of the ID were filed. The Commission has determined not to review this ID and to terminate the investigation as to Pet Center.

On November 22, 2004, the complainants filed a declaration requesting immediate relief against defaulting respondent Tsingtao China. Section 337(g)(1), 19 U.S.C. 1337(g)(1), and Commission Rule 210.16(c), 19 CFR 210.16(c), authorizes the Commission to order limited relief against a respondent found in default unless, after consideration of public interest factors, it finds that such relief should not issue. The Commission may issue an order that could result in the exclusion of Tsingtao China's pet food treats from entry into the United States, and/or issue one or more cease and desist orders that could result in Tsingtao China being required to cease and desist from engaging in unfair acts in the importation and sale of its pet food treats. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or are likely to do so. For background, *see* In the Matter of Certain Devices for Connecting Computers via Telephone Lines, Inv. No. 337–TA–360, USITC Pub. No. 2843 (December 1994) (Commission Opinion).

When the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or cease and desist orders would have on (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the President has 60 days to approve or disapprove the Commission's action. During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed.

Written Submissions: The parties to the investigation, interested government agencies, and any other interested parties are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Complainants and the IA are also requested to submit proposed remedial orders for the Commission's consideration. The written submissions and proposed remedial orders must be filed no later than close of business on April 25, 2005. Reply submissions must be filed no later than the close of business on May 2, 2005. No further submissions on these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document and 12 true copies thereof on or before the deadlines stated above with the Office of the Secretary. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment during the proceedings. All such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons why the

Commission should grant such treatment. *See* section 201.6 of the Commission's Rules of Practice and Procedure, 19 CFR 201.6. Documents for which confidential treatment by the Commission is sought will be treated accordingly. All non-confidential written submissions will be available for public inspection at the Office of the Secretary.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in sections 210.16(c) and 210.42 of the Commission's Rules of Practice and Procedure (19 CFR 210.16(c) and 210.42).

By order of the Commission.

Issued: April 13, 2005.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 05–7878 Filed 4–19–05; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701–TA–297 and 731–TA–422 (Second Review)]

Steel Rails From Canada

AGENCY: International Trade Commission.

ACTION: Termination of five-year reviews.

SUMMARY: The subject five-year reviews were initiated in January 2005 to determine whether revocation of the countervailing duty and antidumping duty orders on steel rails from Canada would be likely to lead to continuation or recurrence of material injury to a domestic industry. On April 11, 2005, the Department of Commerce published notice that it was revoking the orders effective February 9, 2005 because ''no domestic interested party responded to the sunset review notice of initiation by the applicable deadline'' (70 FR 18361). Accordingly, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)), the subject reviews are terminated.

EFFECTIVE DATE: February 9, 2005.

FOR FURTHER INFORMATION CONTACT: Robert Carpenter (202–205–3172), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*).

Authority: These reviews are being terminated under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.69 of the Commission's rules (19 CFR § 207.69).

By order of the Commission.

Issued: April 15, 2005.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 05–7926 Filed 4–19–05; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. Morocco FTA–103–11]

Effect of Modifications to the U.S.-Morocco Free Trade Agreement

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation and request for written submissions.

SUMMARY: Following receipt of a request on April 14, 2005, from the Acting United States Trade Representative (USTR) under authority delegated by the President and pursuant to section 104 of the United States-Morocco Free Trade Agreement Implementation Act (19 U.S.C. 3805 note), the Commission instituted investigation No. Morocco FTA–103–11, *Effect of Modifications to the U.S.–Morocco Free Trade Agreement.*

EFFECTIVE DATE: April 15, 2005.

FOR FURTHER INFORMATION CONTACT: Information may be obtained from Janis Summers, Office of Tariff Affairs (202) 205–2605, *janis.summers@usitc.gov*), and Douglas Newman, Office of Industries (202) 205–3328, *douglas.newman@usitc.gov*); for information on legal aspects, contact William Gearhart of the Office of the General Counsel (202) 205–3091, *william.gearhart@usitc.gov*). The media should contact Margaret O'Laughlin, Office of External Relations (202) 205–1819, *margaret.olaughlin@usitc.gov*).

Background: On August 17, 2004, the President signed the United States-Morocco Free Trade Agreement Implementation Act (the Act). The Act approved the Agreement and authorized the President to proclaim the tariff and other customs treatment set forth therein. As required by section 2104(f) of the Trade Act of 2002, the Commission submitted its advice concerning the likely impact of the Agreement in June 2004.

According to USTR, the United States and Morocco (''the Parties'') drafted the Agreement based on the assumption that it would enter into force at the beginning of a calendar year, and the date on which the Agreement was to enter into force was January 1, 2005. Due to subsequent events, the Parties agreed that the date of entry into force of the Agreement should be delayed until July 1, 2005. Accordingly, the Parties agreed to amend the Agreement so that the first stage of negotiated tariff reductions and related measures will become effective on that date, with the second stage starting on January 1, 2006. In addition, the Parties agreed to amend the Agreement so that the in-quota quantities of the tariff-rate quotas for agricultural and apparel goods and the quantities of textile and apparel goods that receive preferential tariff treatment, as set out in the Agreement, be reduced by fifty percent for the period July 1, 2005 through December 31, 2005, after which the previously agreed treatment would be accorded.

According to USTR, the Parties will exchange letters to modify the Agreement as specified in the preceding paragraph in order to effect a date of entry into force of July 1, 2005; no other amendments to the Agreement will be made.

Section 201 of the Act authorizes the President, subject to the consultation and layover requirements of section 104 of the Act, to proclaim such tariff modifications and other customs treatment as are necessary to carry out or apply specified provisions of the Agreement with Morocco. One of the requirements set out in section 104 of the Act is that the President obtain advice from the United States International Trade Commission.

USTR asked that the Commission provide advice on the probable effect of the modifications to the Agreement described above, with a view toward identifying any changes in the Commission's previous advice concerning the impact of the Agreement.

As requested, the Commission will submit its advice to USTR by April 28, 2005, and shortly thereafter issue a public version of the report with any confidential business information deleted.

The Commission has styled this as a section 103 investigation to make it part of a series of reports, generally submitted under section 103 of the U.S. implementing legislation for a free trade agreement (*e.g.*, section 103 of the

NAFTA Implementation Act, section 103 of the United States-Singapore Free Trade Agreement Implementation Act), in which the Commission provides advice to the President on the effect of a modification to the agreement. This investigation is the 11th in a series of such investigations.

Written Submissions: No public hearing is planned. However, interested parties are invited to submit written statements concerning the matters to be addressed by the Commission in this investigation. Submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street SW., Washington, DC 20436. In view of the short amount of time that the Commission has to provide its advice, the Commission asks that any written statements related to the Commission's report be submitted to the Commission at the earliest practical date and no later than the close of business on April 25, 2005. The Commission will consider submissions received by that date.

All written submissions must conform with the provisions of section 201.8 of the *Commission's Rules of Practice and Procedure* (19 CFR 201.8). Section 201.8 of the rules requires that a signed original (or copy designated as an original) and fourteen (14) copies of each document be filed. In the event that confidential treatment of the document is requested, at least four (4) additional copies must be filed, in which the confidential business information must be deleted (see the following paragraph for further information regarding confidential business information). The Commission's rules do not authorize filing submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the rules (*see* Handbook for Electronic Filing Procedures, *ftp://ftp.usitc.gov/pub/reports/electronic_filing_handbook.pdf*). Persons with questions regarding electronic filing should contact the Secretary (202) 205–2000 or *edis@usitc.gov*).

Any submissions that contain confidential business information must also conform with the requirements of section 201.6 of the *Commission's Rules of Practice and Procedure* (19 CFR 201.6). Section 201.6 of the rules requires that the cover of the document and the individual pages be clearly marked as to whether they are the ''confidential'' or ''nonconfidential'' version, and that the confidential business information be clearly identified by means of brackets. All written submissions, except for confidential business information, will be made available in the Office of the Secretary to the Commission for inspection by interested parties.

The Commission may include some or all of the confidential business information submitted in the course of this investigation in the report it sends to the USTR and the President. As requested by USTR, the Commission will publish a public version of the report. However, in the public version, the Commission will not publish confidential business information in a manner that would reveal the operations of the firm supplying the information.

The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) *http://edis.usitc.gov.* Hearing impaired individuals may obtain information on this matter by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000.

By order of the Commission.

Issued: April 18, 2005.

Marilyn R. Abbott

Secretary to the Commission.

[FR Doc. 05–8015 Filed 4–19–05; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–05–015]

Government in the Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: April 28, 2005 at 11 a.m.

PLACE: Room 101, 500 E Street, SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meetings: none.
2. Minutes.
3. Ratification List.
4. Inv. No. 731–TA–653. (Second Review) (Sebacic Acid from China)—briefing and vote. (The Commission is currently scheduled to transmit its determination and Commissioners' opinions to the Secretary of Commerce on or before May 11, 2005.)
5. Outstanding action jackets: none.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: April 18, 2005.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 05–8017 Filed 4–18–05; 11:48 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Clean Water Act

Under 28 CFR 50.7, notice is hereby given that on April 7, 2005, a proposed Consent Decree in *United States* v. *Air Products and Chemicals, et al.,* Civil Action JH–88–365 (D. Md.), was lodged with the United States District Court for the District of Maryland.

This Consent Decree obligates the 40 settling defendants at the Maryland Sand and Gravel Superfund Site (the ''Site'') to implement the Record of Decision for the third operable unit at the Site. This is the third consent decree in this action for remedial action at the Site. EPA estimates that the work to be performed under the decree will be approximately $23 million. In the decree, the United States covenants not to sue the settling defendants under Section 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), 42 U.S.C. 9606 and 9607, for the third operable unit, subject to certain standard reopeners for new information or unknown conditions.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Air Product and Chemicals, Inc.,* et al., Civil Action No. JH–88–365 (D. Md.), DOJ# 90–11–225A.

The Consent Decree may be examined at the Office of the United States Attorney, District of Maryland, 36 South Charles Street, Baltimore, MD, 21201, and at U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103–2029. During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice,

Washington, DC. 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov),* fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $198.00 (25 cents per page) payable to the U.S. Treasury.

Robert Brook,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 05–7931 Filed 4–19–05; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that on April 8, 2005, a proposed consent decree in *United States* v. *Atlantic Richfield Company*, No. CIV–S–05–00686 GEB–DAD, was lodged with the United States District Court for the Eastern District of California.

The complaint, filed concurrently with lodging of the consent decree, seeks reimbursement pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9607, of response costs incurred and to be incurred by the U.S. Department of Agriculture, U.S. Forest Service, at the Walker Mine Tailings Site, located in the Plumas National Forest, Plumas County, California. The consent decree provides that Atlantic Richfield will pay $2.5 million towards the United States' response costs. In exchange for that settlement payment, Atlantic Richfield will receive a site-wide covenant-not-to-sue, subject to certain reservations.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Atlantic Richfield Company,* D.J. Ref. No. 90–11–2–1320.

During the public comment period, the consent decree may be examined on the following Department of Justice website, *http://www.usdoj.gov/enrd/open.html.* A copy of the consent decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy, please enclose a check in the amount of $8.50 (25 cents per page reproduction cost), or $5.50 for a copy without attachments, payable to the U.S. Treasury.

Ellen M. Mahan,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 05–7932 Filed 4–19–05; 8:45 am]

BILLING CODE 4410–55–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree; Under the Resource Conservation and Recovery Act (''RCRA'') and the Clean Water Act

Pursuant to 28 CFR 50.7 and RCRA Section 7003, 42 U.S.C. 6973, notice is hereby given that on April 8, 2005, a Consent Decree with Edwards Oil Service, Inc., was lodged with the United States District Court for the Eastern district of Michigan in the matter of *United States* v. *Edwards Oil Service, Inc.*, Civil No. 05–71379 (E.D. Mich.).

In that action the United States seeks to recover from the Defendant pursuant to Section 3008(a) of the Solid Waste Disposal Act, commonly known as the Resource Conservation and Recovery Act of 1976, as amended (''RCRA''), 42 U.S.C. 6928(a), and Section 311(e) of the Federal Water Pollution Control Act, commonly known as the Clean Water Act (''CWA''), 33 U.S.C. 1321(e), as amended by the Oil Pollution Act of 1990, 33 U.S.C. 2701 *et seq.*, injunctive relief and civil penalties for the Defendant's alleged violations of RCRA, CWA and various federal and state regulations promulgated thereunder at the Defendant's used oil and hazardous waste treatment facility in Detroit, Wayne County, Michigan.

Under the proposed Consent Decree, Defendant Edwards Oil Service would undertake various injunctive measures and pay a civil penalty of $11,000.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. In accordance with RCRA Section 7003(d), 42 U.S.C. 6973(d), commentors also may request an opportunity for a public meeting in the affected area to discuss the proposed covenants not to sue under RCRA Section 7003, 42 U.S.C. 6973.

All comments, and/or requests for a public meeting under RCRA Section 7003(d) should refer to *United States* v. *Edwards Oil Service, Inc.*, Civil No. 05–71379 (E.D. Mich.) and DOJ Reference No. 90–7–1–06968.

The Consent Decree may be examined at the Office of the United States Attorney, Eastern District of Michigan, 211 W. Fort Street, Detroit, Michigan 48226–3211; and at EPA Region 5, 77 W. Jackson Blvd., Chicago, Illinois 60604 (contact Richard Murawski, Esq. (312) 886–6721). During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/open.html.*

A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please refer to *United States* v. *Edwards Oil Service, Inc.*, Civil No. 05–71379 (E.D. Mich.) and DOJ Reference No. 90–7–1–06968, and enclose a check in the amount of $6.50 (25 cents per page reproduction cost) payable to the U.S. Treasury.

William Brighton,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 05–7930 Filed 4–14–05; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration; Correction

The notice dated March 29, 2005, and published in the **Federal Register** on April 6, 2005 (70 FR 17471), contained the following errors: The listing of controlled substances Raw Opium (9600), and Concentrate of Poppy Straw (9670), were inadvertently added for Chattem Chemicals, Inc., 3801 St. Elmo Avenue, Building 18, Chattanooga, Tennessee 37409. The Notice of Registration should be corrected by deleting Raw Opium (9600) and Concentrate of Poppy Straw (9670). Additionally, in the last paragraph of the Notice of Registration the company name was listed incorrectly as Cambrex Charles City. The correct name is Chattem Chemicals, Inc.

Dated: April 13, 2005.

William J. Walker,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 05–7820 Filed 4–19–05; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importation of Controlled Substances; Notice of Application

Pursuant to 21 U.S.C. 958(1)), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a registration under 21 U.S.C. 952(a) (2) (b) authorizing the importation of such substances, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with 21 CFR 1301.34(a), this is notice that on August 13, 2004, Clinical Trial Services (US), Inc., 2661 Audubon Road, Audubon, Pennsylvania 19403, made application by renewal to the Drug Enforcement Administration (DEA) for registration as an importer of Fentanyl (9801), a basic class of controlled substance listed in Schedule II.

The company plans to import small quantities of the listed controlled substance in dosage form to conduct clinical trails.

Any manufacturer who is presently, or is applying to be, registered with DEA to manufacture such basic classes of controlled substances may file written comments or objections to the issuance of the proposed registration and may, at the same time, file a written request for a hearing on such application pursuant to 21 CFR 1301.43 and in such form as prescribed by 21 CFR 1316.47.

Any such written 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: DEA 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 20, 2005.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1301.34(b), (c), (d), (e), and (f). As noted in a previous notice published in the **Federal Register** on September 23, 1975, (40 FR 43745–46), all applicants for registration to import a basic class of any controlled substance listed in Schedule I or II are, and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1301.34(b), (c), (d), (e), and (f) are satisfied.

Dated: April 11, 2005.

William J. Walker,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 05–7819 Filed 4–19–05; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF LABOR

Employment Standards Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment Standards Administration is soliciting comments concerning the proposed collection: Application for Authority to Employ Full-Time Students at Subminimum Wages in Retail/Service Establishments or Agriculture (WH–200 and WH–202). A copy of the proposed information collection request can be obtained by contacting the office listed below in the addresses section of this Notice.

DATES: Written comments must be submitted to the office listed in the addresses section below on or before June 20, 2005.

ADDRESSES: Ms. Hazel M. Bell, U.S. Department of Labor, 200 Constitution Ave., NW., Room S–3201, Washington, DC 20210, telephone (202) 693–0418, fax (202) 693–1451, *E-mail bell.hazel@dol.gov.* Please use only one method of transmission for comments (mail, fax, or E-mail).

SUPPLEMENTARY INFORMATION:

I. Background

The Fair Labor Standards Act (FLSA), 29 U.S.C. 201 *et seq.*, sections 14(b)(1) and 14(b)(2) require the Secretary of Labor to provide certificates authorizing the employment of full-time students at 85 percent of the applicable minimum wage in retail or service establishments and in agriculture, to the extent necessary to prevent curtailment of opportunities for employment. These provisions set limits on such employment as well as prescribe safeguards to protect the full-time students so employed and full-time employment opportunities of other workers. Sections 519.3, 519.4 and 519.6 of Regulations, 29 CFR Part 519, Employment of Full-Time Students at Subminimum Wages, set forth the application requirements as well as the terms and conditions for the (1) employment of full-time students at subminimum wages under certificates and (2) temporary authorization to employ such students at subminimum wages. The WH–200 and WH–202 are voluntary use forms that are prepared and signed by an authorized representative of the employer to employ full-time students at subminimum wage. This information is used to determine whether a retail or service or agricultural employer should be authorized to pay subminimum wages to full-time students pursuant to the provisions of section 14(b) of the Fair Labor Standards Act. This information collection is currently approved for use through October 31, 2005.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

III. Current Actions

The Department of Labor seeks the approval of the extension of this information collection to grant employer requests to employ students at subminimum wages.

Type of Review: Extension.

Agency: Employment Standards Administration.

Titles: Application for Authority to Employ Full-Time Students at Subminimum Wages in Retail/Service Establishments or Agriculture.

OMB Number: 1215–0032.

Agency Numbers: WH–200 and WH–202.

Affected Public: Business or other for-profit; Farms; Individual or households; No-for-profit institutions.

Total Respondents: 240.

Total Annual Responses: 240.

Estimated Total Burden Hours: 43.

Estimated Time Per Response: 10 to 30 minutes.

Frequency: Annually.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: April 14, 2005.

Sue Blumenthal,

Acting Chief, Branch of Management Review and Internal Control, Division of Financial Management, Office of Management, Administration and Planning, Employment Standards Administration.

[FR Doc. 05–7891 Filed 4–19–05; 8:45 am]

BILLING CODE 4510–27–P

DEPARTMENT OF LABOR

Employment Standards Administration

Notice of Signing of a Memorandum of Understanding Between the Departments of Justice and Labor Relating to the Investigation and Prosecution of Crimes and Civil Enforcement Actions Under the Labor-Management Reporting and Disclosure Act of 1959

AGENCY: Employment Standards Administration, Labor.

ACTION: Notice of Memorandum of Understanding between the Departments of Justice and Labor.

SUMMARY: The Department of Labor, Employment Standards Administration, is providing notice of a Memorandum of Understanding between the Departments of Justice and Labor (MOU), signed January 18, 2005. The MOU describes the responsibilities of each agency in the performance of functions under the Labor-Management Reporting and Disclosure Act of 1959 (Act). The purpose of the MOU is to revise a previous Memorandum of Understanding Between the Departments of Justice and Labor (1960 Memorandum of Understanding) concerning the allocation of such responsibilities. The MOU enhances administrative efficiency in the investigation and prosecution of crimes and civil violations arising under the Act. A copy of the MOU is set forth below.

EFFECTIVE DATE: January 18, 2005.

FOR FURTHER INFORMATION CONTACT: Mr. John H. Heaney, Chief, Division of Enforcement, Office of Labor-Management Standards, Employment Standards Administration, U.S. Department of Labor, Room N–5119, Washington, DC 20210, (202) 693–1229 (this is not a toll-free number). TTY/TDD, 1–800–877–8339.

SUPPLEMENTARY INFORMATION: The Labor-Management Reporting and Disclosure Act of 1959 (Pub. L. 86–257; 29 U.S.C. 401–531) is designed to protect the rights and interests of individual employees and union members as they relate to the activities of labor organizations, labor organization officers and employees, employers, labor relations consultants, and their officers and representatives. Section 607 of the Act (29 U.S.C. 527) provides that, in order to avoid unnecessary expense and duplication of functions among government agencies, the Secretary of Labor may make agreements for cooperation and mutual assistance in the performance of the Secretary's functions under the Act. The first such agreement was entered into between the Departments of Labor and Justice in the 1960 Memorandum of Understanding. *See* 25 FR 1708 (Feb. 26, 1960). To this same end, the MOU appended to this notice specifies which criminal matters will be investigated by the Department of Labor, which will be investigated by the Department of Justice, and which will be investigated by the Department of Justice under delegation from the Secretary of Labor, subject to specific arrangements agreed upon by the two Departments on a case-by-case basis.

In addition, the MOU contains a provision, not present in the 1960 Memorandum of Understanding, that specifies the respective roles of the Departments of Justice and Labor in regard to relief from the employment disabilities arising under § 504 of title V, 29 U.S.C. 504. Section 504 prohibits persons convicted of crimes specified in the statute from serving in stated capacities with an LMRDA-covered labor organization or employer association; from serving as a labor relations consultant or in a position with a corporation or association having specific collective bargaining authority or direct responsibility for labor-management relations; and from having decisionmaking authority or control of labor organization assets (other than as a member of the labor organization). The disability imposed by Section 504 extends until 13 years following a disqualifying conviction or end of any imprisonment resulting from such conviction.

No Third-Party Rights Created: The MOU was adopted for the purpose of the internal management of the Executive Branch. The MOU is not intended to, does not, and may not be relied upon to, create any rights, substantive or procedural, enforceable at law or in equity by any party in any matter civil or criminal, nor does the MOU place any limitations on otherwise lawful investigative or litigation prerogatives of the United States Department of Justice or otherwise lawful investigative prerogatives of the United States Department of Labor.

Dated at Washington, DC, this 15th day of April 2005.

Victoria A. Lipnic,

Assistant Secretary for Employment Standards Administration.

Don Todd,

Deputy Assistant Secretary for Labor-Management Programs.

Memorandum of Understanding Between the Departments of Justice and Labor Relating to the Investigation and Prosecution of Crimes and Civil Enforcement Actions Under the Labor-Management Reporting and Disclosure Act of 1959 (Pub. L. 86–257)

Whereas, the Labor-Management Reporting and Disclosure Act of 1959 (Public Law 86–257; 73 Stat. 519) imposes certain duties and responsibilities upon the Attorney General and Secretary of Labor with regard to prosecution of crimes arising under the Act and civil enforcement actions under the Act; and

Whereas, that Act, in section 601, imposes upon the Secretary of Labor the responsibility for conducting investigations of persons who have violated, or are about to violate, any provision of the Act (except title I, or amendments made by this Act to other statutes); and

Whereas, that Act, in section 607, provides that the Secretary of Labor may make interagency agreements to avoid unnecessary expense and duplication of functions among Government agencies and ensure cooperation and mutual assistance in the performance of functions under the Act; and

Whereas, it is desirable and essential that areas of responsibility and procedures in connection with any investigations, prosecutions of offenses and civil enforcement actions arising under the Act should be the subject of formal agreement between the Departments;

It is hereby agreed and understood between the Department of Justice and the Department of Labor as follows:

1. *Criminal Prosecutions.* All cases involving violation of the criminal provisions of the Act will be prosecuted by the Department of Justice. Those cases investigated by the Department of Labor, hereinafter detailed, will be referred to the appropriate United States Attorney's office(s) where the criminal violation(s) occurred or to the Criminal Division, Department of Justice, as provided in section 607.

2. *Investigations of Matters Made Criminal by the Act.* Subject to specific arrangements agreed upon by the Department of Justice and the Department of Labor on a case by case basis, investigations under the Act will be conducted as follows:

(a) The Department of Labor will through its own staff investigate those criminal matters arising under:

1. Title II (Reporting by labor organizations, officers and employees of labor organizations and employers).
2. Title III (Trusteeship).
3. Section 501(c) (Embezzlement of union funds) of title V.
4. Section 502 (Bonding) of title V.
5. Section 503 (Making of loans and payment of fines) of title V.
6. Section 504 (Prohibition against certain persons holding office) of title V.
7. Section 602 (Extortionate picketing) of title VI.
8. Section 610 (Deprivation of rights by force and violence) of title VI.

(b) The Department of Justice will investigate those criminal matters arising under section 505 (Containing an amendment to section 302, Labor Management Relations Act, 1947, as amended) of title V, and under delegation from the Secretary of Labor, section 501(c) (Embezzlement of union funds) of title V, section 504 (Prohibition against certain person holding office) of title V, and section 610 (Deprivation of rights by force and violence) of title VI.

3. *Notification.* Whenever either Department learns or is informed of any matter coming within the investigative jurisdiction of the other Department, as set forth above, it will notify such other Department in writing and furnish all information in its possession regarding the matter.

4. *Exercise of other functions.* Exercise of delegated investigative authority by the Department of Justice pursuant to this agreement shall not preclude the Department of Labor from making inquiries for the purpose of administrative action related to the crime being investigated. Nothing in this Memorandum of Understanding shall be construed to affect the investigative jurisdiction of the Department of Justice under other statutes.

5. *Prosecution of Civil Enforcement Actions.* Any violations of the Act, which form the basis for civil enforcement actions, will be investigated by the Department of Labor. Whenever the Department of Labor concludes that a civil enforcement action should be instituted, it will refer the case to the Department of Justice, with the request that suit be instituted on behalf of the Secretary of Labor, and will furnish the Department of Justice with all pertinent information in the possession of the Department of Labor. Upon receipt of such request, the Department of Justice will institute and will conduct the civil enforcement action on behalf of the Secretary of Labor. The Department of Justice will not institute any civil enforcement action under the Act except upon the request of the Department of Labor, nor will the Department of Justice voluntarily dismiss any action so instituted except with the concurrence of the Department of Labor. The Department of Justice will dismiss any action so instituted upon the request of the Department of Labor. Department of Justice attorneys will collaborate with the attorneys of the Office of the Solicitor of Labor in the preparation and, to the extent feasible, in the presentation of such actions in court.

6. *Section 504(a) Proceedings.* Subject to specific arrangements agreed upon by the Department of Justice and the Department of Labor on a case by case basis, the Department of Labor through its own staff will investigate matters arising under section 504(a)(B) of title V, as amended, (judicial determination that a disqualified person's service in any prohibited capacity would not be contrary to the purposes of the LMRDA). Following the investigation, the Department of Labor will issue its views on the appropriateness of such a judicial determination under section 504(a)(B). The Department of Justice will present the Secretary of Labor's views before a Federal sentencing judge or United States district court, by making all necessary appearances and filings. Department of Justice attorneys will collaborate with the attorneys of the Office of the Solicitor of Labor in the preparation and, to the extent feasible, in the presentation of the Secretary's views in court. With respect to relief under section 504(a) by judicial reduction of the period of disability, the Department of Justice will seek the views of the Department of Labor prior to opposing or agreeing to a request for such relief by a criminal defendant or disqualified person.

7. *Instructions.* So that the terms of understanding will be effectively performed, both Departments will issue instructions for the guidance of its officers, such instructions to be submitted for comment to the other Department prior to their issuance.

8. Periodic reviews of this agreement will be made to determine any adjustments which seem necessary based on experience under this Act.

Signed at Washington, DC, this 18th day of January 2005.

John Ashcroft,

Attorney General.

Elaine L. Chao,

Secretary of Labor.

[FR Doc. 05–7890 Filed 4–19–05; 8:45 am]

BILLING CODE 4510–CP–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

Agency Information Collection Activities; Announcement of Office of Management and Budget (OMB) Control Numbers Under the Paperwork Reduction Act

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice; announcement of OMB approval of information collection requirements.

SUMMARY: The Occupational Safety and Health Administration (OSHA) announces that OMB has extended its approval for a number of information collection requirements found in sections of 29 CFR parts 1910 and 1926. OSHA sought approval under the Paperwork Reduction Act of 1995 (PRA–95), and, as required by that Act, is announcing the approval numbers and expiration dates for those requirements.

EFFECTIVE DATE: This notice is effective April 20, 2005.

FOR FURTHER INFORMATION CONTACT: Todd Owen or Theda Kenney, Directorate of Standards and Guidance, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue, NW., Washington, DC 20210, telephone: (202) 693–2222.

SUPPLEMENTARY INFORMATION: In a series of **Federal Register** notices, the Agency announced its requests to OMB to renew its current extensions of approvals for various information collection (paperwork) requirements in its safety and health standards for general industry and the construction industry (i.e., 29 CFR parts 1910 and 1926). In these **Federal Register** announcements, the Agency provided 60-day comment periods for the public to respond to OSHA's burden-hour and cost estimated.

In accordance with PRA–95 (44 U.S.C. 3501–3520), OMB renewed its approval for these information collection requirements and assigned OMB control numbers to these requirements. The table below provides the following information for each of these OMB-approved requirements: the title of the collection; the date of the **Federal Register** notice; the **Federal Register** reference (date, volume, and leading page); OMB's control number; and the new expiration date.

Title	Date of **Federal Register** publication, Federal Register reference, and OSHA docket number	OMB control number	Expiration date
Access to Employee Exposure and Medical Records (29 CFR 1910.1020)	12/19/2003, 68 FR 70840, Docket No. 1218–0065 (2004)	1218–0065	04/30/2007
Additonal Requirements for Special Dipping and Coating Operations (Dip Tanks) (29 CFR 1910.126(g)(4)).	3/16/2004, 69 FR 12354, Docket No. 1218–00237 (2004)	1218–0237	7/31/2007
Application for Training Grant	3/18/2004, 69 FR 12868, Docket No. 1218–00020 (2004)	1218–0020	09/30/2007
Asbestos in General Industry (29 CFR 1910.1001)	02/05/2004, 69 FR 5587, Docket No. 1218–0133 (2004)	1218–0133	06/30/2007
Bloodborne Pathogens Standard (29 CFR 1910.1030)	05/07/2004, 69 FR 25611, Docket No. 1218–0180 (2004)	1218–0180	11/30/2007
Concrete and Masonry Construction (29 CFR part 1926, subpart Q)	08/26/2004, 69 FR 52528, Docket No. 1218–0095 (2004)	1218–0095	12/31/2007
Construction Fall Protection Plans and Training Requirements (29 CFR 1926.502 and 1926.503).	12/23/2003, 69 FR 74258, Docket No. 1218–0197 (2004)	1218–0197	05/31/2007
Control of Hazardous Energy Sources (Lockout/Tagout) (29 CFR 1910.147).	03/11/2004, 69 FR 11664, Docket No. 1218–0150 (2004)	1218–0150	02/29/2008
Course Evaluation	04/20/2004, 69 FR 21163, Docket No. 1218–0173 (2004)	1218–0173	09/30/2007
Cranes and Derricks Standard for Construction (29 CFR 1926.550(a)(6))	07/28/2004, 69 FR 45081, Docket No. 1218–0113 (2004)	1218–0113	12/31/2007
Cranes and Derricks Standard for Construction; Notification of Operational Specification and Hand Signals (29 CFR 1926.550.	09/23/2004, 69 FR 57097, Docket No. 1218–0115 (2004)	1218–0115	12/31/2007
Cranes and Derricks Standard for Construction; Recording Tests for Toxic Gases and Oxygen-Deficient Atmospheres in Enclosed Spaces.	09/23/2004, 69 FR 57098, Docket No. 1218–0054 (2004)	1218–0054	12/31/2007
Crawler, Truck and Locomotive Cranes (29 CFR 1926.550(b)(2))	07/19/2004, 69 FR 43020, Docket No. 1218–0232 (2004)	1218–0232	02/29/2008
Definition and Requirement for a Nationally Recognized Testing Laboratory (29 CFR 1910.7).	11/04/2003, 68 FR 62477, Docket No. 1218–0147 (2004)	1218–0147	04/30/2007
Formaldehyde (29 CFR 1910.1048)	12/12/2003, 68 FR 69425, Docket No. 1218–0145 (2004)	1218–0145	04/30/2007
Gear Certification (29 CFR part 1919)	08/27/2004, 69 FR 52734, Docket No. 1218–0003 (2004)	1218–0003	12/31/2007
Grantee Quarterly Progress Report	03/18/2004, 69 FR 12869, Docket No. 1218–0100 (2004)	1218–0100	08/31/2007
The Hydrostatic Testing Provision of the Standard on Portable Fire Extinguishers (29 CFR 1910.157(f)(16)).	03/26/2004, 69 FR 15907, Docket No. 1218–0218 (2004)	1218–0218	09/30/2007
Ionizing Radiation (29 CFR 1910.1096)	07/23/2004, 69 FR 44068, Docket No. 1218–0103 (2004)	1218–0103	11/30/2007
Logging Operations (29 CFR 1910.266)	07/28/2004, 69 FR 45082, Docket No. 1218–0198 (2004)	1218–0198	12/31/2007
Manlifts (29 CFR 1910.68(e))	07/19/2004, 69 FR 43018, Docket No. 1218–0226 (2004)	1218–0198	12/31/2007

Title	Date of **Federal Register** publication, Federal Register reference, and OSHA docket number	OMB control number	Expiration date
Manufacturer's Certification of Modification Made to Construction Aerial Lifts (29 CFR 1926.453).	10/22/2003, 69 FR 60417, Docket No. 1218–0216 (2004)	1218–0216	03/31/2007
Material Hoists, Personnel Hoists, and Elevators: Posting Requirements, Text and Inspections (29 CFR 1926.552(a)(2), (b)(1)(i), (c)(10), and (c)(15)).	03/02/2004, 69 FR 9852, Docket No. 1218–0231 (2004)	1218–0231	11/30/2007
Mechanical Power Presses (29 CFR 1910.217(e)(1)(i) and (e)(1)(ii))	03/16/2004, 69 FR 12355, Docket No. 1218–0229 (2004)	1218–0229	07/31/2007
Notice of Alleged Safety and Health Hazards, OSHA 7 Form	08/27/2004, 69 FR 52732, Docket No. 1218–0064 (2004)	1218–0064	02/29/2008
Overhead and Gantry Cranes Standard (29 CFR 1910.179)	03/02/2004, 69 FR 9853, Docket No. 1218–0224 (2004)	1218–0224	07/31/2007
Portable Fire Extinguishers (Annual Maintenance Certification Record) (29 CFR 1910.157(e)(13)).	03/26/2004, 69 FR 15905, Docket No. 1218–0238 (2004)	1218–0238	09/30/2007
Powered Platforms for Building Maintenance (29 CFR 1910.66)	07/27/2004, 69 FR 44694, Docket No. 1218–0121 (2004)	1218–0121	12/31/2007
Rigging Equipment for Material Handling (29 CFR 1926.251)	03/26/2004, 69 FR 15906, Docket No. 1218–0233 (2004)	1218–0233	11/30/2007
Student Data Form	03/16/2004, 69 FR 12353, Docket No. 1218–0172 (2004)	1218–0172	08/31/2007
Welding, Cutting and Brazing (29 CFR 1910.225(e))	04/06/2004, 69 FR 18140, Docket No. 1218–0207 (2004)	1218–0207	09/30/2007

In accordance with 5 CFR 1320.5(b), an agency cannot conduct, sponsor, or require a response to a collection of information unless the collection displays a valid OMB control number and the agency informs respondents that they are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Authority and Signature

Jonathan L. Snare, Acting Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*), and Secretary of Labor's Order No. 5–2002 (67 FR 65008).

Signed at Washington, DC, on April 12, 2005.

Jonathan L. Snare,

Acting Assistant Secretary of Labor.

[FR Doc. 05–7939 Filed 4–19–05; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR–1218–0130 (2005)]

Electrical Standards for Construction and General Industry; Extension of the Office of Managaement and Budget's (OMB) Approval of the Information-Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for public comment.

SUMMARY: OSHA solicits comments concerning its request for an extension of the information-collection requirements contained in the Electrical Standards for Construction (29 CFR part 1926, subpart K) and for General Industry (29 CFR part 1910, subpart S).

DATES: Comments must be submitted by the following dates:

Hard Copy: Your comments must be submitted (postmarked or received) by June 20, 2005.

Facsimile and electronic transmission: Your comments must be received by June 20, 2005.

ADDRESSES: You may submit comments, identified by OSHA Docket No. ICR–1218–0130 (2005), by any of the following methods:

Regular mail, express delivery, hand-delivery, and messenger service: Submit your comments and attachments to the OSHA Docket Office, Room N–2625, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693–2350 (OSHA's TTY number is (877) 889–5627). The OSHA Docket Office and Department of Labor hours of operation are 8:15 a.m. to 4:45 p.m., e.t.

Facsimile: If your comments, including any attachments, are 10 pages or fewer, you may fax them to the OSHA Docket Office at (202) 693–1648.

Electronic: You may submit comments through the internet at *http://dockets.osha.gov.* Follow instructions on the OSHA Web page for submitting comments.

Docket: For access to the docket to read or download comments or background materials, such as the complete Information-Collections Request (ICR) (containing the Supporting Statement, OMB–83–I Form, and attachments), go to OSHA's Web page at *http://www.OSHA.gov.* Comments, submissions, and the ICR are available for inspection and copying at the OSHA Docket Office at the address above. You also may contact Todd Owen at the address below to obtain a copy of the ICR. (For additional information on submitting comments, please see the ''Public Participation'' heading in the **SUPPLEMENTARY INFORMATION** section of this document.)

FOR FURTHER INFORMATION CONTACT: Todd Owen, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693–2222.

SUPPLEMENTARY INFORMATION:

I. Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments and supporting materials in response to this document by (1) hard copy, (2) FAX transmission (facsimile), or (3) electronically through the OSHA Web page. Because of security-related problems, a significant delay may occur in the receipt of comments by regular mail. Please contact the OSHA Docket Office at (202) 693–2350 (TTY (877) 889–5627) for information about security procedures concerning the delivery of materials by express delivery, hand delivery, and messenger service.

All comments, submissions, and background documents are available for inspection and copying at the OSHA

Docket Office at the above address. Comments and submissions posted on OSHA's Web page are available at *http://www.OSHA.gov.* Contact the OSHA Docket Office for information about material not available through the OSHA Web page, and for assistance using the Web page to locate docket submissions.

Electronic copies of this **Federal Register** notice, as well as other relevant documents, are available on OSHA's Web page. All submissions become public; therefore, private information, such as a social security number, should not be submitted.

II. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (*i.e.,* employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information-collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3506(c)(2)(A)).

This program ensures that information is in the desired format, reporting burden (time and cost) is minimal, collection instruments are understandable, and OSHA's estimate of the information-collection burden is accurate. The Occupational Safety and Health Act of 1970 (the Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657). The information-collection requirements specified by the Electrical Standards for Construction and General Industry alert employees to the presence and types of electrical hazards in the workplace, thereby preventing serious injury and death by electrocution. The information-collection requirements in the standards involve the following: the employer using electrical equipment that is marked by the manufacturer's name, trademark, or other descriptive markings that identify the producer of the equipment, and marking the equipment with the voltage, current, wattage, or other ratings necessary; requiring each disconnecting means for motors and appliances to be marked legibly to indicate its purpose, unless located and arranged so the purpose is evident; requiring the entrances to rooms and other guarded locations containing exposed live parts to be marked with conspicuous warning signs forbidding unqualified persons from entering; and, for construction employers only, establishing and implementing the assured equipment grounding conductor program instead of using ground-fault circuit interrupters.

III. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information-collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and cost) of the information-collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information-collection and -transmission techniques.

IV. Proposed Actions

OSHA is proposing to extend the information-collection requirements contained in the Electrical Standards for Construction (29 CFR part 1926, subpart K) and General Industry (29 CFR part 1910, subpart S). In doing so, the Agency is proposing to adjust the total burden hours of these subparts from 84,803 hours to 13,291 hours. The Agency will summarize the comments submitted in response to this notice, and will include this summary in the request to OMB to extend the approval of the information-collection requirements contained in the standards.

Type of Review: Extension of currently approved information-collection requirements.

Title: Electrical Standards for Construction (29 CFR part 1926, subpart K) and General Industry (29 CFR part 1910, subpart S).

OMB Number: 1218–0130.

Affected Public: Business or other for-profit; Not-for-profit institutions; Federal government; State, local, or tribal governments.

Number of Respondents: 45,000.

Frequency of Response: Occasionally.

Total Responses: 105,750.

Average Time per Response: Varies from three minutes (.05 hour) to post and construct each sign to one hour to develop and implement the assured equipment-grounding program.

Estimated Total Burden Hours: 13,291.

Estimated Cost (Operation and Maintenance): $0.

V. Authority and Signature

Jonathan L. Snare, Acting Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506), Secretary of Labor's Order No. 5–2002 (6765008).

Signed at Washington, DC on April 12th, 2005.

Jonathan L. Snare,

Acting Assistant Secretary of Labor.

[FR Doc. 05–7941 Filed 4–19–05; 8:45 am]

BILLING CODE 4510–26–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Information Security Oversight Office; National Industrial Security Program Policy Advisory Committee: Notice of Meeting

In accordance with the Federal Advisory Committee Act (5 U.S.C. app 2) and implementing regulation 41 CFR 101.6, announcement is made for the following committee meeting:

Name of Committee: National Industrial Security Program Policy Advisory Committee (NISPPAC).

Date of Meeting: May 10, 2005.

Time of Meeting: 10 am–12 noon.

Place of Meeting: National Archives and Records Administration, 700 Pennsylvania Avenue, NW., Thomas Jefferson Room 122, Washington, DC 20408.

Purpose: To discuss National Industrial Security Program policy matters.

This meeting will be open to the public. However, due to space limitations and access procedures, the name and telephone number of individuals planning to attend must be submitted to the Information Security Oversight Office (ISOO) no later than April 29, 2005. ISOO will provide additional instructions for gaining access to the location of the meeting.

FOR FURTHER INFORMATION CONTACT: J. William Leonard, Director Information Security Oversight Office, National Archives Building, 700 Pennsylvania Avenue, Washington, DC 20408, telephone number (202) 219–5250.

Mary Ann Hadyka,

Committee Management Officer.

[FR Doc. 05–7884 Filed 4–19–05; 8:45 am]

BILLING CODE 7515–01–P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection: Comment Request

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* Grant and Cooperative Agreement Provisions.

2. *Current OMB approval number:* 3150–0107.

3. *How often the collection is required:* On occasion, one-time.

4. *Who is required or asked to report:* Grantees and Cooperators.

5. *The estimated number of annual respondents:* 60.

6. *The number of hours needed annually to complete the requirement or request:* 1,160 hours (1,055 for reporting (17.58 hours per response) and 105 for recordkeeping (.57 hours per recordkeeper)).

7. *Abstract:* The Division of Contracts uses provisions, required to obtain or retain a benefit in its awards and cooperative agreements to ensure: Adherence to Public Laws, that the Government's rights are protected, that work proceeds on schedule, and that disputes between the Government and the recipient are settled.

Submit, by June 20, 2005, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate 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 or other forms of information technology?

A copy of the draft supporting statement 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. OMB clearance requests are available at the NRC worldwide Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html*. The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T–5 F53, Washington, DC 20555–0001, by telephone at 301–415–7233, or by Internet electronic mail to *INFOCOLLECTS@NRC.GOV*.

Dated at Rockville, Maryland, this 11th day of April, 2005.

For the Nuclear Regulatory Commission.

Brenda Jo Shelton,

NRC Clearance Officer, Office of Information Services.

[FR Doc. E5–1855 Filed 4–19–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. PAPO–00; ASLBP No. 04–829–01–PAPO]

Atomic Safety and Licensing Board; In the Matter of U.S. Department of Energy (High Level Waste Repository: Pre-Application Matters); Order (Scheduling Case Management Conference)

April 13, 2005.

Before Administrative Judges: Thomas S. Moore, Chairman, Alex S. Karlin, Alan S. Rosenthal.

The Pre-License Application Presiding Officer Board will hold a case management conference at 9 a.m. EDT on May 4, 2005 in the Atomic Safety and Licensing Board Panel's hearing room, third floor, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland. Counsel for the United States Department of Energy (DOE), the NRC Staff, and the State of Nevada (State) shall attend and participate in the conference. Because DOE, the NRC Staff, and the State are all represented by multiple counsel, the Board expects there will not be any motions to alter the conference date. Counsel for any other potential participants, interested Indian Tribes, and interested units of local government (collectively Potential Participants) are encouraged to attend. Even though no Potential Participants submitted proposed case management orders on the subject of privilege log formats and procedures pursuant to the Board's January 24, 2005 First Case Management Order or subsequent March 11, 2005 Order, the Potential Participants, at the discretion of the Board, may be allowed to participate in the conference.

The Administrator of the Licensing Support Network (LSN) shall also attend to respond to Board and participant questions concerning the design capabilities of the LSN and to provide technical information and recommendations regarding those portions of the proposed case management order submitted by DOE and the NRC Staff impacting the LSN. In this regard, DOE, the NRC Staff, and the State shall each have in attendance their respective information technology data management specialist or administrator who can address computer hardware and software issues that may arise in the development and use of electronic privilege logs and procedures. Counsel for Potential Participants are similarly encouraged to bring their respective information technology data management specialist or administrator to the conference.

The Board will issue a subsequent order detailing the matters that DOE, the NRC Staff, the State, and counsel for Potential Participants should be prepared to discuss. The Board intends to conduct the conference quickly and efficiently but notes that the number of subjects to be covered may make it necessary to reconvene following a recess for lunch. All attendees should plan accordingly.

To expedite entry into the NRC headquarters complex, counsel for DOE, the NRC Staff, and the State should, no later than *3 p.m. EDT on Monday, May 2, 2005,* e-mail the Board (*PAPO@nrc.gov*) a list of names of all persons associated with that participant that will be attending the hearing. Counsel for Potential Participants and any member of the public who wish to expedite his or her entry into the building on May 4 also should e-mail a similar preregistration. In preregistering, counsel should recognize that the seating capacity of the ASLBP hearing room is not unlimited.

Upon arrival at the main entrance of the NRC headquarters Two White Flint North building on May 4, all participants and members of the public seeking to attend the conference shall be required to present photo identification and then undergo security screening. All non-NRC employees must be escorted to the hearing room by an authorized NRC employee. Because of the time required for the security procedures, all counsel should arrive no later than *8:30 a.m.* on May 4, 2005 in order not to delay the conference. Similarly, the members of the public

also should arrive early in order to gain on-time admission to the hearing room.

It is so ordered.

Issued in Rockville, Maryland, on April 13, 2005.

For the Pre-License Application Presiding Officer Board.

Thomas S. Moore,

Chairman, Administrative Judge.

[FR Doc. E5–1850 Filed 4–19–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket 72–30]

Maine Yankee Atomic Power Company; Issuance of Environmental Assessment and Finding of No Significant Impact Regarding a Proposed Exemption

AGENCY: Nuclear Regulatory Commission.

ACTION: Environmental assessment.

FOR FURTHER INFORMATION CONTACT: Jeremy A. Smith, Project Manager, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone: (301) 415–8500; fax number: (301) 415–8555; e-mail: *jas5@nrc.gov*.

SUPPLEMENTARY INFORMATION: The U.S. Nuclear Regulatory Commission (NRC or the staff) is considering issuance of an exemption, pursuant to 10 CFR 72.7, from the provisions of 10 CFR 72.72(d) to Maine Yankee Atomic Power Company (Maine Yankee or applicant). The requested exemption would allow Maine Yankee to maintain a single set of spent fuel, high-level radioactive waste, and reactor-related Greater Than Class C (GTCC) waste records in accordance with the requirements of 10 CFR 50.71(d)(1), for the Independent Spent Fuel Storage Installation (ISFSI) at Maine Yankee in Wiscasset, Maine.

Environmental Assessment (EA)

Identification of Proposed Action: By letter dated November 29, 2004, Maine Yankee requested an exemption from the requirement in 10 CFR 72.72(d) which states in part that, ''Records of spent fuel, high-level radioactive waste, and reactor-related GTCC waste containing special nuclear material meeting the requirements in paragraph (a) of this section must be kept in duplicate. The duplicate set of records must be kept at a separate location sufficiently remote from the original records that a single event would not destroy both sets of records.''

The proposed action before the Commission is whether to grant this exemption pursuant to 10 CFR 72.7.

Need for the Proposed Action: The applicant stated that ISFSI spent-fuel, high-level radioactive waste, and reactor-related GTCC waste records will be maintained in a manner consistent with the records of Maine Yankee, which are stored in compliance with the requirements established in 10 CFR 50.71(d)(1). No exemption is requested from the 10 CFR 72.72(d) requirements for the records retention period requirements. The applicant seeks to provide consistency in recordkeeping maintenance for the Maine Yankee ISFSI spent fuel, high-level radioactive waste, and reactor-related GTCC waste records. The exemption request will also preclude the need to construct and operate a separate, second records storage facility to store a duplicate set of spent-fuel, high-level radioactive waste, and reactor-related GTCC waste records.

10 CFR 50.71(d)(1) provides requirements for the maintenance of nuclear power plant records. The regulation states:

> Records which must be maintained pursuant to this part may be the original or a reproduced copy or microform if such reproduced copy or microform is duly authenticated by authorized personnel and the microform is capable of producing a clear and legible copy after storage for the period specified by the Commission regulations. The record may also be stored in electronic media with the capability of producing legible, accurate, and complete records during the required retention period. Records such as letters, drawings, specifications, must include all pertinent information such as stamps, initials, and signatures. The licensee shall maintain adequate safeguards against tampering with and loss of records.

Regulatory Guide 1.88, ''Collection, Storage, and Maintenance of Nuclear Power Plant Quality Assurance Records,'' establishes guidance for the storage of nuclear plant quality assurance records. Maine Yankee plans to implement Revision 2 of Regulatory Guide 1.88, with minor exceptions described in the Maine Yankee Quality Assurance Plan (QAP).

The requirements in ANSI N45.2.9–1974 have been endorsed by the NRC in Regulatory Guide 1.88 as adequate for satisfying the recordkeeping requirements of 10 CFR Part 50, Appendix B, which states in part that ''records shall be identifiable and retrievable.'' Additionally, conditions in 10 CFR Part 50, Appendix B establish that ''[c]onsistent with applicable regulatory requirements (including 10 CFR 50.71(d)(1)), the applicant shall establish requirements concerning record retention, such as duration, location, and assigned responsibility.'' ANSI N.45.2.9–1974 also satisfies the requirements of 10 CFR 72.72 by providing for adequate maintenance of records regarding the identity and history of the spent fuel in storage. Such records would be subject to and need to be protected from the same types of degradation mechanisms as nuclear power plant Quality Assurance records.

Environmental Impacts of the Proposed Action: An exemption from the requirement to store a duplicate set of ISFSI records at a separate location has no impact on the environment. Storage of records does not change the methods by which spent fuel will be handled and stored at the Maine Yankee ISFSI and does not change the amount of effluents, radiological or nonradiological, associated with the ISFSI.

Alternative to the Proposed Action: Since there is no environmental impact associated with the proposed action, alternatives are not evaluated other than the no action alternative. The alternative to the proposed action would be to deny approval of the exemption and, therefore, not allow storage of ISFSI spent fuel records at a single qualified record storage facility. The no action alternative would require the applicant to construct or identify a separate storage facility; therefore, the environmental impacts of the proposed action would be less than, or the same as, the no action alternative.

Agencies and Persons Consulted: On March 28, 2005, Maine State Nuclear Safety Inspector Mr. Patrick Dostie was contacted regarding the environmental assessment for the proposed action and had no comments.

Finding of No Significant Impact

The environmental impacts of the proposed action have been reviewed in accordance with the requirements set forth in 10 CFR Part 51. Based upon the foregoing Environmental Assessment, the Commission finds that the proposed action of granting the exemption from 10 CFR 72.72(d), so that Maine Yankee may store spent fuel records for the ISFSI in a single records storage facility which meets the requirements of ANSI N.45.2.9–1974, with the given exception listed in the Maine Yankee QAP, will not significantly impact the quality of the human environment. Accordingly, the Commission has determined that an environmental impact statement for the proposed exemption is not necessary.

The request for exemption was docketed under 10 CFR Part 72, Docket 72–30. For further details with respect to this exemption request, see the Maine Yankee letter requesting the exemption

dated November 29, 2004. Supporting documentation is available for inspection at the NRC's Public Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html*. A copy of the Finding of No Significant Impact can be found at this site using the Agencywide Documents Access and Management System (ADAMS). These documents may also 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, MD 20852. The PDR reproduction contractor will copy documents for a fee. 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 at 1–800–397–4209 or (301) 415–4737, or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 13th day of April 2005.

For the Nuclear Regulatory Commission.

Jeremy A. Smith,

Project Manager, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards.

[FR Doc. E5–1854 Filed 4–19–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Subcommittee Meeting on Planning and Procedures; Notice of Meeting

The ACRS Subcommittee on Planning and Procedures will hold a meeting on May 4, 2005, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed pursuant to 5 U.S.C. 552b(c)(2) and (6) to discuss organizational and personnel matters that relate solely to the internal personnel rules and practices of the ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows:

Wednesday, May 4, 2005–10 a.m.–11:30 a.m.

The Subcommittee will discuss proposed ACRS activities and related matters. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official, Mr. Sam Duraiswamy (telephone: 301–415–7364) between 7:30 a.m. and 4:15 p.m. (ET) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted only during those portions of the meeting that are open to the public.

Further information regarding this meeting can be obtained by contacting the Designated Federal Official between 7:30 a.m. and 4:15 p.m. (ET). Persons planning to attend this meeting are urged to contact the above named individual at least two working days prior to the meeting to be advised of any potential changes in the agenda.

Dated: April 13, 2005.

Michael L. Scott,

Branch Chief, ACRS/ACNW.

[FR Doc. E5–1851 Filed 4–19–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Subcommittee Meeting on Fire Protection; Notice of Meeting

The ACRS Subcommittee on Fire Protection will hold a meeting on May 4, 2005, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, May 4 , 2005—8:30 a.m. until 3 p.m.

The purpose of this meeting is to discuss the NRC/EPRI joint work on the improved fire risk assessment methodology. The Subcommittee will discuss NUREG/CR–6850, ''EPRI/NRC–RES Fire PRA Methodology for Nuclear Power Facilities.'' The Subcommittee will also discuss the NRC staff's efforts on verification and validation of fire models. The Subcommittee will hear presentations by and hold discussions with the NRC staff, representatives of the EPRI, and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official, Mr. Hossein P. Nourbakhsh (Telephone: 301–415–5622) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted.

Further information regarding this meeting can be obtained by contacting the Designated Federal Official or the Cognizant Staff Engineer between 7:30 a.m. and 4:15 p.m. (ET). Persons planning to attend this meeting are urged to contact one of the above named individuals at least two working days prior to the meeting to be advised of any potential changes to the agenda.

Dated: April 13, 2005.

Michael L. Scott,

Branch Chief, ACRS/ACNW.

[FR Doc. E5–1852 Filed 4–19–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Meeting Notice

In accordance with the purposes of Sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards (ACRS) will hold a meeting on May 5–6, 2005, 11545 Rockville Pike, Rockville, Maryland. The date of this meeting was previously published in the **Federal Register** on Wednesday, November 24, 2004 (69 FR 68412).

Thursday, May 5, 2005, Conference Room T–2B3, Two White Flint North, Rockville, Maryland

8:30 a.m.–8:35 a.m.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting. *8:35 a.m.–10 a.m.: Final Review of the License Renewal Application for Arkansas Nuclear One, Unit 2 (ANO–2)* (Open)—The Committee will hear presentations by and hold discussions with representatives of the Entergy Operations, Inc. and the NRC staff regarding the license renewal application for ANO–2 and the associated final Safety Evaluation Report prepared by the NRC staff.

10:15 a.m.–11:45 a.m.: Draft Final Revisions to Standard Review Plan (SRP), Chapter 13, ''Conduct of Operations'' (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the draft final revisions to Sections 13.1.2–13.1.3, ''Operating Organization,'' of SRP Chapter 13 and related NUREG–1791, ''Guidance for Assessing Exemption Requests from the Nuclear Power Plant Licensed Operator Staffing

Requirements Specified in 10 CFR 50.54 (m).''

12:45 p.m.–2:45 p.m.: Advanced Reactor Designs for Hydrogen Production (Open)—The Committee will hear presentations by and hold discussions with representatives of the Department of Energy (DOE) regarding the status of DOE plans and research and development activities in support of advanced reactor designs for hydrogen production.

3 p.m.–4 p.m.: Significant Recent Operating Events (Open)—The Committee will hear a briefing by the Chairman of the ACRS Subcommittee on Plant Operations regarding significant recent operating events.

4 p.m.–5 p.m.: Proactive Initiative (Open)—The Committee will discuss proposed options for addressing ACRS proactive initiative on safety management.

5:15 p.m.–6:45 p.m.: Preparation of ACRS Reports (Open)—The Committee will discuss proposed ACRS reports on matters considered during this meeting.

Friday, May 6, 2005, Conference Room T–2B3, Two White Flint North, Rockville, Maryland

8:30 a.m.–8:35 a.m.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

8:35 a.m.–10 a.m.: Steam Generator Tube Integrity Program (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the objectives, technical approach, and results of the steam generator tube integrity program being conducted by the Argonne National Laboratory.

10:15 a.m.–11:45 a.m.: Digital Instrumentation and Control (I&C) Systems Research Plan (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the digital I&C systems research plan.

11:45 a.m.–12 Noon: Reconciliation of ACRS Comments and Recommendations (Open)—The Committee will discuss the responses from the NRC Executive Director for Operations (EDO) to comments and recommendations included in recent ACRS reports and letters. The EDO responses are expected to be made available to the Committee prior to the meeting.

1 p.m.–2 p.m.: Future ACRS Activities/Report of the Planning and Procedures Subcommittee (Open)—The Committee will discuss the recommendations of the Planning and Procedures Subcommittee regarding items proposed for consideration by the full Committee during future meetings. Also, it will hear a report of the Planning and Procedures Subcommittee on matters related to the conduct of ACRS business, including anticipated workload and member assignments.

2 p.m.–6:30 p.m.: Preparation of ACRS Reports (Open)—The Committee will continue its discussion of proposed ACRS reports.

6:30 p.m.–7 p.m.: Miscellaneous (Open)—The Committee will discuss matters related to the conduct of Committee activities and matters and specific issues that were not completed during previous meetings, as time and availability of information permit.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 5, 2004 (69 FR 59620). In accordance with those procedures, oral or written views may be presented by members of the public, including representatives of the nuclear industry. Electronic recordings will be permitted only during the open portions of the meeting. Persons desiring to make oral statements should notify the Cognizant ACRS staff named below five days before the meeting, if possible, so that appropriate arrangements can be made to allow necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during the meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by contacting the Cognizant ACRS staff prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the Cognizant ACRS staff if such rescheduling would result in major inconvenience.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, as well as the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting Mr. Sam Duraiswamy, Cognizant ACRS staff (301–415–7364), between 7:30 a.m. and 4:15 p.m., ET.

ACRS meeting agenda, meeting transcripts, and letter reports are available through the NRC Public Document Room at *pdr@nrc.gov,* or by calling the PDR at 1–800–397–4209, or from the Publicly Available Records System (PARS) component of NRC's document system (ADAMS) which is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html* or *http://www.nrc.gov/reading-rm/doc-collections/* (ACRS & ACNW Mtg schedules/agendas).

Videoteleconferencing service is available for observing open sessions of ACRS meetings. Those wishing to use this service for observing ACRS meetings should contact Mr. Theron Brown, ACRS Audio Visual Technician (301–415–8066), between 7:30 a.m. and 3:45 p.m., ET, at least 10 days before the meeting to ensure the availability of this service. Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment and facilities that they use to establish the videoteleconferencing link. The availability of videoteleconferencing services is not guaranteed.

Dated: April 14, 2005.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. E5–1853 Filed 4–19–05; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51541; File No. SR–NSCC–2005–02]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing of Proposed Rule Change To Enhance Automated Customer Account Transfer Service To Permit the Automated Notification of Changes to the Broker-Dealer of Record for Applicable Insurance Products

April 13, 2005.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on April 4, 2005, the National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission'') and on April 12, 2005, amended the proposed rule change described in Items I, II, and III below, which items have been prepared primarily by NSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

[1] 15 U.S.C. 78s(b)(1).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NSCC is seeking to enhance its Automated Customer Account Transfer Service (''ACAT Service'') to permit the automated notification of changes to the broker-dealer of record for applicable insurance products.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC 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. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Information regarding the broker-dealer of record for an annuity or life insurance product is maintained by the insurance company that is the issuer of the product. Currently there is no mechanism within the ACAT Service that can automate notification of changes to the broker-dealer of record. Annuity and life insurance products have a manually-intensive processing stream connected with account transfers relative to the automated processing of assets such as equity and debt securities and mutual fund shares.

Under the proposed rule change, the delivering and receiving broker-dealers for annuities or life insurance products would be able to communicate information regarding the change of broker-dealer of record through the ACAT Service. The ACAT Service would communicate the information through a link to a new product of NSCC's Insurance Processing Services (''IPS'') called Inforce Transactions (''IFT''). IFT would relay the information to the issuer insurance company and would also communicate to the ACAT Service whether the insurance company had confirmed, rejected, or requested a modification of the change. NSCC would not debit or credit a receiving or delivering firm for the value of any applicable insurance product that is part of a customer account transfer.

In order for the receiving and delivering broker-dealers and the issuer insurance company to be able to effect the change through the ACAT Service, the insurance company must participate in IPS, the receiving broker-dealer must participate in the ACAT Service and IPS, and the delivering broker-dealer must participate in the ACAT Service.

Although the proposed rule change relates to the ACAT Service as it interfaces with IPS, NSCC is also proposing to make certain technical changes to the ACAT Service rule. For purposes of bringing efficiencies to the financial marketplace, NSCC's Rule 50, which governs the ACAT Service, would cover all asset types regardless of whether NSCC has the operational capability to effect the transfer of such assets. As proposed, NSCC either would undertake to cause the asset transfer or asset reregistration to occur or would issue a document evidencing each delivering firm's obligation and each receiving firm's entitlement that would result from an ACAT Service transfer. Such instructions, regardless of their form, are commonly referred to as receive and deliver instructions, and NSCC would add a definition, ''ACAT Receive and Deliver Instruction,''[3] relating to there instructions. NSCC is also proposing certain technical changes to the ACATS rule.

NSCC believes the proposed rule change is consistent with the requirements of section 17A of the Act[4] and the rules and regulations thereunder applicable to NSCC because it will automate and facilitate the change in broker-dealer of record for eligible insurance products associated with account transfers, which can be expected to reduce processing errors and delays that are typically associated with manual processes. This fosters cooperation and coordination with persons engaged in account transfers and furthers the protection of investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change will impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

NSCC has worked closely with an industry business advisory group in developing the enhancements that are the subject of this rule filing. Written comments relating to the proposed rule change have not yet been solicited or received. NSCC will notify the Commission of any written comments received by NSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period: (i) As the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding; or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change; or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*) or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NSCC–2005–02 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–NSCC–2005–02. 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

[2] The Commission has modified the text of the summaries prepared by NSCC.

[3] As proposed, ''ACAT Receive and Deliver Instruction'' would be defined in NSCC Rule 1 as follows:

''The term 'ACAT Receive and Deliver Instruction' shall mean such document, form, file, report or other information issued by the Corporation [NSCC] to a Member or to a QSD (as defined in Rule 50), on behalf of such QSD's participants, which identifies Automated Customer Account Transfer receive and deliver obligations. ''

[4] 15 U.S.C. 78q–1.

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 filings also will be available for inspection and copying at the principal office of NSCC and on NSCC's Web site at *http://www.nscc.com.* All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NSCC–2005–02 and should be submitted on or before May 11, 2005.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–1849 Filed 4–19–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51545; File No. SR–NYSE–2005–24]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to the Definition of Research Analyst in Rule 344 (Research Analysts and Supervisory Analysts) and Rule 472 (Communications With the Public)

April 14, 2005.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (''Exchange Act'' or the ''Act''),[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on April 1, 2005, the New York Stock Exchange, Inc. (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The NYSE filed the proposed rule change pursuant to section 19(b)(3)(A) of the Act[4] and Rule 19b–4(f)(6) thereunder,[5] which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange hereby proposes an amendment to Rule 344 (Research Analysts and Supervisory Analysts) and Rule 472 (Communications with the Public) to amend the definition of ''research analyst'' in the respective Rules to include ''associated persons.''

Below is the text of the proposed rule change. Proposed new language is italicized.

Rule 344. Research Analysts and Supervisory Analysts

Research analysts and supervisory analysts must be registered with, qualified by, and approved by the Exchange.

Adopted: June 18, 1964.

SUPPLEMENTARY MATERIAL:

.10 For purposes of this Rule, the term ''research analyst'' includes a member, allied member, *associated person* or employee who is primarily responsible for the preparation of the substance of a research report and/or whose name appears on such report. Such research analysts must pass a qualification examination acceptable to the Exchange.

.11—No Change.

.12 For purposes of this Rule, the term ''associated person'' is defined as a natural person engaged in investment banking, or a securities or kindred business, who is directly or indirectly controlling or controlled by a member or member organization, whether or not any such person is registered, applying for registration or exempt from registration with the NYSE.

Rule 472. Communications With the Public

Approval of Communications and Research Reports

(a)—.30—No Change.

.40 For purposes of this Rule, the term ''research analyst'' includes a member, allied member, *associated person* or employee of a member or member organization primarily responsible for, and any person who reports directly or indirectly to such research analyst in connection with, the preparation of the substance of a research report whether or not any such person has the job title of ''research analyst.''

For purposes of this Rule, the term ''household member'' means any individual whose principal residence is the same as the research analyst's principal residence. Paragraphs (e)(1), (2), (3), (4)(i), (ii), (iii), (iv) and (v), (k)(1)(iii)b., c., and (k)(2)(i)b. and e. apply to any account in which a research analyst has a financial interest, or over which the research analyst exercises discretion or control, other than an investment company registered under the Investment Company Act of 1940. The trading restrictions applicable to research analysts and household members (*i.e.*, paragraphs (e)(1), (2), (3), (4)(i), (ii), (iii), (iv) and (v); do not apply to a ''blind trust'' account that is controlled by a person other than the research analyst or research analyst's household member where neither the research analyst nor household member knows of the account's investments or investment transactions.

.50—.120—No Change.

.130 For purposes of this Rule, the term ''associated person'' is defined as a natural person engaged in investment banking, or a securities or kindred business, who is directly or indirectly controlling or controlled by a member or member organization, whether or not any such person is registered, applying for registration or exempt from registration with the NYSE.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

The Exchange is proposing to amend its definition of ''research analyst'' to include ''associated persons'' in order to cover natural persons who control or are under the control of members and member organizations.

Background. On May 10, 2002 and July 29, 2003, the Commission

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[5] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a *et seq.*

[3] 17 CFR 240.19b–4.

[4] 15 U.S.C. 78s(b)(3)(A).

[5] 17 CFR 240.19b–4(f)(6).

approved, among other things, amendments to Exchange Rules 344 and 472. The amendments were promulgated to address the issue of research analysts' conflicts of interest.[6]

Proposed Amendments. Proposed Rules 344.10 and 472.40 would be amended to include ''associated persons'' to the group of persons included under the definition of ''research analyst.'' In addition, proposed Rule 344.12 and 472.130 would include a definition of the term ''associated person.''

As proposed, an ''associated person'' is defined as a natural person engaged in investment banking, or a securities or kindred business, who is directly or indirectly controlling or controlled by a member or member organization, whether or not any such person is registered, applying for registration or exempt from registration with the NYSE (*see* proposed Rules 344.12 and 472.130).

(2) Statutory Basis

The statutory basis for this proposed rule change is section 6(b)(5)[7] of the Exchange Act. Under section 6(b)(5), the rules of the Exchange must be designed, among other things, to foster cooperation and coordination with persons engaged in regulating transactions in securities. Adopting this amended definition will provide for greater uniformity between the Exchange and NASD rules and facilitate member firm compliance with these rules.[8]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition 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

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the 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) does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to section 19(b)(3)(A) of the Act[9] and Rule 19b–4(f)(6) thereunder.[10] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

The Exchange has requested that the Commission waive the 5-day pre-filing notice. The Commission believes that waiving the five-day pre-filing requirement for this proposed rule change is consistent with the protection of investors and the public interest. In addition, in light of the Commission's approval of NASD Rules 1050 and 2711, which include ''associated persons'' within the purview of the definition of ''research analyst,'' the April 4, 2005 deadline for satisfaction of the Research Analyst Qualification Examination Requirement,[11] and the fact that the Exchange does not expect this proposed amendment to be controversial, as it is a conforming change, the Exchange has requested that the Commission waive the 30-day operative period requirement. The Commission believes that it is consistent with the protection of investors and the public interest to waive the 30-day operative delay and make this proposed rule change immediately effective upon filing on April 1, 2005.[12] Waiving the 30-day operative period would allow the Exchange to work in concert with NASD to provide an exemption from the Research Analyst Qualification Examination (Series 86 and 87) for certain research analysts employed by foreign affiliates of a member or member organization who contribute to the preparation of a member's research reports.[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 e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2005–24 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–NYSE–2005–24. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 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 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

[6] *See* Securities Exchange Act Release No. 48252 (July 29, 2003), 68 FR 45875 (August 4, 2003) (SR–NYSE–2002–49) and Securities Exchange Act Release No. 45908 (May 10, 2002), 67 FR 34969 (May 16, 2002) (SR–NYSE–2002–09).

[7] 15 U.S.C. 78f(b)(5).

[8] NASD Rule 2711 (Research Analysts and Research Reports) defines ''research analyst'' to mean the associated person who is primarily responsible for, and any associated person who reports directly or indirectly to such a research analyst in connection with, preparation of the substance of a research report, whether or not any such person has the job title of ''research analyst.''

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6).

[11] Research analysts, as defined in Exchange Rule 344.10, must be registered with, qualified and approved by the Exchange, by taking the Research Analyst Qualification Examination (Series 86/87 Examination). The registration and qualification requirement became effective March 30, 2004. Candidates who have been functioning as research analysts as of the effective date of March 30, 2004, and submitted a registration application to NASD, on behalf of the CRD, by June 1, 2004, have been given until April 4, 2005, to meet the qualification requirements.

[12] For the purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[13] *See* SR–NYSE–2005–25 and SR–NASD–2005–043.

available publicly. All submission should refer to File Number SR–NYSE–2005–24 and should be submitted on or before May 11, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–1859 Filed 4–19–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51544; File No. SR–Phlx–2005–03]

Self-Regulatory Organizations; Order Granting Accelerated Approval to Proposed Rule Change and Amendment No. 1 Thereto by the Philadelphia Stock Exchange, Inc. Relating to System Changes to the Exchange's Automated Options Market (AUTOM) System

April 14, 2005.

I. Introduction

On January 10, 2005, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to reflect system changes to the Exchange's Automated Options Market (AUTOM) and Automatic Execution System (AUTO–X) that are intended to increase the number of orders that are handled and executed automatically. On March 9, 2005, the Exchange filed Amendment No. 1 to the proposed rule change.[3] The proposed rule change, as amended, was published for comment in the **Federal Register** on March 16, 2005.[4] The Commission received no comments on the proposal. This order approves the proposed rule change, as amended, on an accelerated basis.

II. Description of the Proposal

The Exchange proposes to amend Exchange Rule 1080, Philadelphia Stock Exchange Automated Options Market (AUTOM) and Automatic Execution System (AUTO–X), to reflect system changes to AUTOM that are intended to increase the number of orders that are handled and executed electronically on the Exchange and to specify when orders that are not executed automatically on the Exchange would be routed through the Intermarket Option Linkage (''Linkage'').[5]

Proposed Exchange Rule 1080(c)(v) provides that if the Exchange receives a market order that is not eligible for automatic execution when any of the conditions described in Exchange Rule 1080(c)(iv) exist, such market order, if not already executed manually by the specialist, would be executed automatically in two situations. First, if a market order has not already been executed manually by the specialist, it would be automatically executed against a limit order on the limit order book or a quotation that becomes the national best bid or offer (''NBBO'') while the market order is pending. Second, a market order that is being handled manually by the specialist would be automatically executed against an inbound limit order or quotation priced at or better than the NBBO.

Under proposed Exchange rule 1080(c)(vi), when the Exchange's disseminated quotation is not the NBBO, marketable public customer limit orders would be exposed to the trading crowd and to participants in Phlx XL for a period of three seconds following receipt. At the end of this three second exposure period, if the Exchange's disseminated price is still not the NBBO, any unexecuted contracts remaining in such an order would be automatically sent as Principal Acting as Agent (''P/A'') Order[6] through the Linkage to an exchange whose disseminated price is the NBBO. If at the end of the three-second exposure period the Exchange's disseminated price is the NBBO, any unexecuted contracts remaining in the marketable public customer limit order would be automatically executed on the Exchange up to the Exchange's disseminated size. Any remaining contracts then would be sent as P/A Order(s) to the exchange(s) displaying the NBBO. If the marketable public customer limit order is canceled during the three-second period, no P/A Order would be sent and the marketable public customer limit order would not be executed.

Proposed Exchange Rule 1080(c)(vi)(A)(2) would require that a specialist submit prior written instructions to the Exchange regarding the routing of any P/A Orders that the specialist would send through the Linkage.[7] the AUTOM System would route P/A Orders on behalf of the specialist according to these instructions three second after receipt of the marketable public customer limit order if such order is not executed or is partially executed during the three-second period and the Exchange's disseminated price at the end of the three-second period is not the NBBO. In the case of a partial execution during the three-second period, the P/A Order that is routed to the market disseminating the NBBO would be for the size that is equal to the number of contracts remaining in the order.

Under proposed Exchange Rule 1080(c)(vi)(B), marketable limit orders for the proprietary account(s) of a broker-dealer (or any account in which a broker-dealer or an associated person of a broker-dealer has any direct or indirect interest) received when the Exchange's disseminated quotation is not the NBBO would be automatically cancelled by the AUTOM System. A message indicating the cancellation would be automatically sent to the sender of the order.

Proposed Exchange Rule 1080(i) would automate the handling of market orders to sell when the disseminated bid price is zero. Currently, Exchange Rule 1080(c)(vi)(G) provides that such orders are handled manually by the specialist. Under the proposed rule change, the AUTOM system would automatically convert market orders to sell when the bid price is zero to limit orders to sell with a limit price of $.05. Such market orders to sell, as well as limit orders to sell, would be placed on the limit order book in price-time priority. In the event that the bid price in the particular series becomes $.05 or greater, thus establishing a bid price that makes the booked limit orders to sell marketable, such orders to sell at the $.05 limit price or better would be executed in the order in which they were received (*i.e.*, price-time priority).

[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 replaced the original filing in its entirety.

[4] *See* Securities Exchange Act Release No. 51352 (March 9, 2005), 70 FR 12935.

[5] *See* Plan for the Purpose of Creating and Operating an Intermarket Option Linkage (''Linkage Plan''), Securities Exchange Act Release Nos. 44482 (June 27, 2001), 66 FR 35470 (July 5, 2001) (Amendment to Linkage Plan to Conform to the Requirements of Securities Exchange Act Rule 11Ac1–7; 43573 (November 16, 2000), 65 FR 70851 (November 28, 2000) (Notice of Phlx Joining the Linkage Plan); and 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000) (Approval of the Linkage Plan).

[6] A P/A Order is an order for the principal account of a specialist (or equivalent entity on another Participant Exchange that is authorized to represent Public Customer orders), reflecting the terms of a related unexecuted Public Customer order for which the specialist is acting as agent. *See* Exchange Rule 1083(k)(i).

[7] The Exchange stated that this requirement enables the specialist to carry out his or her agency responsibilities with respect to P/A Orders submitted through the Linkage.

The Exchange also proposed a technical change to an example noted in Exchange Rule 1080(c)(iv)(A) to reflect decimal pricing.

III. Discussion and Commission Findings

The Commission has reviewed carefully the proposed rule change, as amended, and finds that it is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[8] In particular, the Commission finds that the proposed rule change is consistent with section 6(b)(5) of the Act,[9] which requires that the rules of an exchange be designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national securities system, and, in general, protect investors and the public interest.

The Commission believes that the proposal automating the execution of certain market orders that currently are handled manually by the specialist will provide more efficient and immediate executions.[10] In addition, the Commission believes that the three-second order exposure feature for inbound limit orders when the Exchange's disseminated price is not the NBBO, along with the automatic execution of unexecuted contracts up to the Exchange's disseminated size when the Exchange's disseminated price becomes the NBBO and the automatic routing through Linkage of unexecuted contracts when the Exchange's disseminated price is not the NBBO, will provide an effective means for avoiding trade-throughs. The Commission further believes that it is consistent with the Act for the Exchange to cancel automatically broker-dealer marketable limit orders in instances where the Exchange's disseminated quote is not the NBBO.

Finally, the Commission believes that the automated handling of market orders to sell when the bid price is zero should also provide more efficient executions of such orders.

The Exchange has requested accelerated approval of the proposed rule change. The Commission notes that a portion of the proposed rule change is similar to rules previously approved by the Commission for another exchange.[11] The Commission also notes that the Exchange's proposed rule change was subject to the full comment period, with no comments received, and accelerated approval of the proposed rule change, by increasing the automation of order handling, should help facilitate more efficient and immediate executions of transactions on the Exchange.

Accordingly, the Commission finds good cause, pursuant to section 19(b)(2) of the Act [12] for approving the proposed rule change, as amended, prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**.

IV. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[13] that the proposed rule change (SR–Phlx 005–03), as amended, be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–1860 Filed 4–19–05; 8:45 am]

BILLING CODE 8010–01–P

[8] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[9] 15 U.S.C. 78f(b)(5).

[10] The Commission notes that the proposed rule change does not alter the Exchange's rules on priority or trade allocation. According to the Exchange, orders that are executed automatically on the Phlx are allocated to participants on parity in accordance with the allocation algorithm set forth in Exchange Rule 1014(g)(vii). Telephone conversation between Richard S. Rudolph, Vice President and Counsel, Exchange, and Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, on April 11, 2005.

[11] *See* Securities Exchange Act Release No. 49068 (January 13, 2004) 69 FR 2775 (January 20, 2004)(SR–BSE–2002–15).

[12] 15 U.S.C. 78s(b)(2).

[13] 15 U.S.C. 78s(b)(2).

[14] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 5055]

Culturally Significant Objects Imported for Exhibition Determinations: ''Matisse, His Art and His Textiles: The Fabric of Dreams''

Summary: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition ''Matisse: His Art and His Textiles: The Fabric of Dreams,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners. I also determine that the exhibition or display of the exhibit objects at The Metropolitan Museum of Art, New York, New York, from on or about June 20, 2005 to on or about September 25, 2005, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Wolodymyr R. Sulzynsky, the Office of the Legal Adviser, Department of State, (telephone: 202/453–8050). The address is Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: April 13, 2005.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 05–7922 Filed 4–19–05; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Delegation of Authority No. 277]

Delegation by the Secretary of State to the Assistant Secretary for Economic and Business Affairs of Authorities Normally Vested in the Under Secretary for Economic, Business, and Agricultural Affairs

By virtue of the authority vested in me as Secretary of State by the laws of the United States, including Section 1 of the State Department Basic Authorities Act of 1956, as amended (22 U.S.C. 2651 a), I hereby delegate to E. Anthony Wayne, to the extent authorized by law, all authorities vested in the Under Secretary for Economic, Business, and Agricultural Affairs, including all authorities vested in the Secretary of State or head of agency that have been or may be delegated or re-delegated to the Under Secretary for Economic, Business, and Agricultural Affairs.

Any authorities covered by this delegation may also be exercised by the Secretary of State or the Deputy Secretary of State.

Any act, executive order, regulation, or procedure subject to, or affected by, this delegation shall be deemed to be such act, executive order, regulation, or procedure as amended from time to time.

This delegation shall enter into effect upon signature and shall expire upon the appointment and entry upon duty of a new Under Secretary for Economic, Business, and Agricultural Affairs.

Any re-delegation of authority by the Under Secretary for Economic, Business, and Agricultural Affairs now in effect shall remain in effect.

This delegation of authority shall be published in the **Federal Register**.

Dated: March 7, 2005.

Condoleezza Rice,

Secretary of State, Department of State.

[FR Doc. 05–7923 Filed 4–19–05; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Delegation of Authority No. 278]

Delegation by the Secretary of State to the Assistant Secretary for Near Eastern Affairs of All Authorities Normally Vested in the Under Secretary for Political Affairs

By virtue of the authority vested in me by the laws of the United States, including Section 1 of the State Department Basic Authorities Act of 1956, as amended (22 U.S.C. 2651 a), I hereby delegate to William J. Burns, to the extent authorized by law, all authorities vested in the Under Secretary for Political Affairs, including all authorities vested in the Secretary of State or head of agency that have been or may be delegated or re-delegated to the Under Secretary for Political Affairs.

Any authorities covered by this delegation may also be exercised by the Secretary of State or the Deputy Secretary of State.

Any act, executive order, regulation, or procedure subject to, or affected by, this delegation shall be deemed to be such act, executive order, regulation, or procedure as amended from time to time.

This delegation shall enter into effect upon signature and shall expire upon the appointment and entry upon duty of a new Under Secretary for Political Affairs.

Any re-delegation of authority by the Under Secretary for Political Affairs now in effect shall remain in effect.

This delegation of authority shall be published in the **Federal Register**.

Dated: February 25, 2005.

Condoleezza Rice,

Secretary of State, Department of State.

[FR Doc. 05–7924 Filed 4–19–05; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration (FAA)

Public Notice for a Change in Use of Aeronautical Property at Louisville International Airport, Louisville, KY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Request for Public Comment.

SUMMARY: Under the provisions of 49 U.S.C. 47153(c), the Federal Aviation Administration is requesting public comment on the Louisville Regional Airport Authority's request to change a portion (3.49 acres) of airport property from aeronautical use to non-aeronautical use. The property is to be sold to Huber's Inc., d/b/a Budget Truck and Car Rental (''Budget'') for commercial development.

The 3.49 acres is located in the Highland Park neighborhood, north of the Intrastate 264, and is located one block on the west side of Crittenden Drive between East Adair and Wawa Avenues.

DATES: Comments must be received on or before May 20, 2005.

ADDRESSES: Comments on this notice may be mailed or delivered in triplicate to the FAA at the following address: Memphis Airports District Office, 2862 Business Park Drive, Building G, Memphis, TN 38118–1555.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Charles T. Miller, Executive Director, Louisville Regional Airport Authority at the following address: P.O. Box 9129, Louisville, Kentucky 40209–0129.

FOR FURTHER INFORMATION CONTACT: Tommy L. Dupree, Program Manager, Memphis Airports District Office, 2862 Business Park Drive, Building G, Memphis, TN 38118–1555, (901) 322–8185. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA is reviewing a request by Louisville Regional Airport Authority to release 3.49 acres of aeronautical property at the Louisville International Airport. The property will be purchased by Huber's Inc., d/b/a Budget Truck and Car Rental (''Budget'') for commercial development. A detailed legal description of the property proposed for release can be requested or seen at either of the contacts given above. However, the general description is 3.49 acres located in the Highland Park neighborhood, north of the Intrastate 264, located one block on the west side of Crittenden Drive between East Adair and Wawa Avenues.

The net proceeds from the non-aeronautical use or the sale of this property will be used for airport purposes.

Any person may inspect the request in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**. In addition, any person may, upon request, inspect the request, notice and other documents germane to the request in person at the Louisville Regional Airport Authority.

Issued in Memphis, Tennessee on April 11, 2005.

LaVerne F. Reid,

Manager, Memphis Airports District Office, Southern Region.

[FR Doc. 05–7829 Filed 4–19–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by Metropolitan Nashville Airport Authority for Nashville International Airport under the provisions of 49 U.S.C. 47501 *et seq.* (Aviation Safety and Noise Abatement Act) and 14 CFR part 150 are in compliance with applicable requirements.

DATES: The effective date of the FAA's determination on the noise exposure maps is April 12, 2005.

FOR FURTHER INFORMATION CONTACT: Peggy S. Keeley, FAA, Memphis Airports District Office, 2862 Business Park Drive, Building G, Memphis, Tennessee 38118–1555 Telephone (901) 322–8186.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for Nashville International Airport are in compliance with applicable requirements of part 150, effective April 12, 2005. Under 49 U.S.C. section 47503 of the Aviation Safety and Noise Abatement Act (hereinafter referred to as ''the Act''), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict non-compatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using

the airport. An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) part 150, promulgated pursuant to the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes to take to reduce existing non-compatible uses and prevent the introduction of additional non-compatible uses.

The FAA has completed its review of the noise exposure maps and accompanying documentation submitted by metropolitan Nashville Airport Board. The documentation, ''Nashville International Airport Noise Exposure Map Update'', that constitutes the ''noise exposure maps'' as defined in section 150.7 of part 150 includes: Existing (2004) Noise Exposure Map, Exhibit NEM–1; Future (2009) Noise Exposure Map, Exhibit NEB–2; Consolidated Jet Aircraft Flight Tracks, Exhibit 2; Consolidated Propeller Aircraft Flight Tracks, Exhibit 3; Tables 1–5 Existing Conditions and Tables 8–12 Future Conditions. The document also contains narrative concerning the development of the maps. The FAA has determined that these noise exposure maps and accompanying documentation are in compliance with applicable requirements. This determination is effective on April 12, 2005.

FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in appendix A of FAR part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program. If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 47503 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 47506 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator that submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 47503 of the Act. The FAA has relied on the certification by the airport operator, under section 150.21 of FAR part 150, that the statutorily required consultation has been accomplished.

Copies of the full noise exposure map documentation and of the FAA's evaluation of the maps are available for examination at the following locations: Federal Aviation Administration, Memphis Airports District Office, 2862 Business Park Drive, Memphis, Tennessee 38118–1555 and Metropolitan Nashville Airport Authority, One Terminal Drive, Suite 501, Nashville, Tennessee 37214–4114. Questions may be directed to the individuals named above under the heading **FOR FURTHER INFORMATION CONTACT**.

Issued in Memphis, Tennessee, April 12, 2005.

LaVerne F. Reid,

Manager, Memphis Airports District Office.

[FR Doc. 05–7826 Filed 4–19–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Receipt of Noise Compatibility Program Update/Revised Five-Year Forecast Condition NEM and Request for Review for Lehigh Valley International Airport, Allentown, PA

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces that it is reviewing a revised noise compatibility program and revised five-year forecast condition NEM submitted by the Lehigh-Northampton Airport Authority for Lehigh Valley International Airport under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) and 14 CFR part 150. This program was submitted subsequent to a determination by the FAA that the associated updated noise exposure maps submitted under 14 CFR part 150 for Lehigh Valley International Airport were in compliance with applicable requirements effective May 14, 2004. The proposed noise compatibility program update and revised five-year forecast condition NEM will be approved or disapproved on or before October 9, 2005.

DATES: The effective date of the start of FAA's review of the noise compatibility program update and revised five-year forecast condition is April 12, 2005. The public comment period ends, June 11, 2005.

FOR FURTHER INFORMATION CONTACT: Edward S. Gabsewics, CEP, Environmental Protection Specialist, Federal Aviation Administration, Harrisburg Airports District Office, 3905 Hartzdale Drive, Suite 508, Camp Hill, PA 17011, telephone (717) 730–2832. Comments on the proposed noise compatibility program update and revised five-year forecast condition NEM should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA is reviewing a proposed noise compatibility program update and revised five-year forecast condition NEM for the Lehigh Valley International Airport, which will be approved or disapproved on or before October 9, 2005. This notice also announces the availability of this proposed noise compatibility program update and revised five-year forecast condition NEB for public review and comment.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The FAA has formally received the noise compatibility program update and revised five-year forecast condition NEM for the Lehigh Valley International Airport, effective on April 12, 2005. It was requested that the FAA review this material and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program update under section 104(b) of the Act. Preliminary review of the submitted material indications that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by

law to a maximum of 180 days, will be completed on or before October 9, 2005.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR part 150, section 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the proposed noise compatibility program update and proposed revised five-year forecast conditions NEM for the Lehigh Valley International Airport are available for examination at the following locations: Lehigh—Northampton Airport Authority, 3311 Airport Road, Allentown, PA 18109 and Federal Aviation Administration, Harrisburg Airports District Office, 3905 Hartzdale Drive, Suite 508, Camp Hill, PA 17011.

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT**.

Issued in Camp Hill, Pennsylvania, April 12, 2005.

Wayne T. Heibeck,

Manager, Harrisburg Airports District Office.

[FR Doc. 05–7827 Filed 4–19–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Noise Exposure Map Notice for Flagstaff Airport, Flagstaff, AZ

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by the City of Flagstaff for Flagstaff Pulliam Airport under the provisions of 49 U.S.C. 47501 *et seq.* (Aviation Safety and Noise Abatement Act) and 14 CFR part 150 are in compliance with applicable requirements.

EFFECTIVE DATE: The effective date of the FAA's determination on the noise exposure maps is April 7, 2005.

FOR FURTHER INFORMATION CONTACT: Michelle Simmons, Environmental Protection Specialist, Federal Aviation Administration, Western Pacific Region Headquarters, PO Box 92007, Los Angeles, California 90009, Telephone: (301) 725–3614.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for Flagstaff Airport are in compliance with applicable requirements of Part 150, effective April 7, 2005. Under 49 U.S.C. 47503 of the Aviation Safety and Noise Abatement Act (hereinafter referred to as ''the Act''), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict non-compatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport. An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal aviation Regulations (FAR) part 150, promulgated pursuant to the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes to take to reduce existing non-compatible uses and prevent the introduction of additional noncompatible uses.

The FAA has completed its review of the noise exposure maps and accompanying documentation submitted by City of Flagstaff, Arizona. The documentation that constitutes the ''Noise Exposure Maps'' as defined in section 150.7 of Part 150 includes: Exhibit 1 ''Existing Conditions (2003) Noise Exposure Map,'' and Exhibit 2 ''Five-Year Forecast (2008) Noise Exposure Map.'' The Noise Exposure Maps contain current and forecast information including the depiction of the airport and its boundaries, the runway configurations, land uses such as residential, open space, commercial/office, community facilities, libraries, churches, open space, infrastructure, vacant and warehouse and those areas within the Yearly Day-Night Average Sound Level (DNL) 65, 70 and 75 noise contours. Estimates for the number of people within these contours for the year 2003 are shown in Table 4B. Estimates of the future residential population within the 2008 noise contours are shown in Table 4D. Exhibit 3J displays the location of noise monitoring sites. Flight tracks for the existing and the five-year forecast Noise Exposure Maps are found in Exhibits 3E, 3F, and 3G. The type and frequency of aircraft operations (including nighttime operations) are found in Tables 3C and 3D. The FAA has determined that these noise exposure maps and accompanying documentation are in compliance with applicable requirements. This determination is effective on April 7, 2005.

FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in Appendix A of FAR Part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program. If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 47503 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 47506 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under Part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator that submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 47503 of the Act. The FAA has relied on the certification by the airport operator, under section 150.21 of FAR Part 150, that the statutorily required consultation has been accomplished.

Copies of the full noise exposure map documentation and of the FAA's evaluation of the maps are available for examination at the following locations:

Federal Aviation Administration, Community and Environmental Needs

Division, APP–600, 800 Independence Avenue, SW., Washington, DC 20591.

Federal Aviation Administration, Western-Pacific Region, Airports Division, Room 3012, 15000 Aviation Boulevard, Hawthorne, California 90261.

Mike Covalt, Airport Manager, City of Flagstaff, Flagstaff Pulliam Airport, 6200 South Pulliam Drive, Flagstaff, Arizona 86001.

Questions may be directed to the individual named above under the heading **FOR FURTHER INFORMATION CONTACT**.

Issued in Hawthorne, California, on April 7, 2005.

Mia Paredes Ratcliff,

Acting Manager, Airports Division, AWP–600, Western-Pacific Region.

[FR Doc. 05–7828 Filed 4–19–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2005–23]

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 May 5, 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 April 12, 2005.

Anthony F. Fazio,

Director, Office of Rulemaking.

Petitions for Exemption

Docket No.: FAA–2004–19468.

Petitioner: Flight Level Aviation, Inc.

Section of 14 CFR Affected: 14 CFR 61.56(i)(1).

Description of Relief Sought: To allow Flight Level Aviation, Inc., to use a flight simulator or flight training device that is not used in accordance with an approved course conducted by a training center certificated under part 142 of this chapter.

[FR Doc. 05–7825 Filed 4–19–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[FHWA Docket No. FHWA–2002–13290]

Final Nationwide Programmatic Section 4(f) Evaluation and Determination for Federal-Aid Transportation Projects That Have a Net Benefit to a Section 4(f) Property

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice.

SUMMARY: The FHWA is issuing this approved final nationwide programmatic Section 4(f) evaluation (programmatic evaluation) for use in certain Federal (Federal-aid or Federal Lands Highway) transportation improvement projects where the use of publicly owned property from a Section 4(f) park, recreation area, or wildlife and waterfowl refuge or property from a historic site results in a net benefit to the Section 4(f) property. The application of this programmatic evaluation is intended to promote environmental stewardship by encouraging the development of measures that enhance Section 4(f) properties and to streamline the Section 4(f) process by reducing the time it takes to prepare, review and circulate a draft and final individual Section 4(f) Evaluation (individual evaluation) that documents compliance with Section 4(f) requirements. This programmatic evaluation provides a procedural option for demonstrating compliance with the statutory requirements of Section 4(f) and is an addition to the existing nationwide programmatic evaluations, all of which remain in effect. This programmatic evaluation can be applied to specific project situations that fit the criteria contained in the *Applicability* section. To fully realize the streamlining benefits of this programmatic evaluation, the FHWA and the Applicant (defined later) are encouraged to initiate coordination with the official(s) with jurisdiction (defined later) over a Section 4(f) property as early as possible and practicable to facilitate the assessment of benefits and harm to a Section 4(f) property.

EFFECTIVE DATE: April 20, 2005.

FOR FURTHER INFORMATION CONTACT: Mr. Lamar S. Smith, Office of Project Development and Environmental Review, HEPE, (202) 366–8994 and Ms. Diane Mobley, Office of the Chief Counsel, HCC–30, (202) 366–1366. FHWA office hours are from 7:45 a.m. to 4:15 p.m. e.t., Monday through Friday, except Federal holidays. The offices are located at 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this notice may be downloaded using a computer, modem, and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Office of the Federal Register's home page at *http://www.archives.gov* and the Government Printing Office's Web site at *http://*

www.access.gpo.gov. An electronic version of the programmatic evaluation may be downloaded at the FHWA Web site: *http://www.environment.fhwa.dot.gov/guidebook/gbwhatsnew.htm.*

Contents of Preamble

- Background on the Nationwide Section 4(f) Evaluation and Determination.
- Description of Action.
- Why Issue a New Nationwide Section 4(f) Evaluation?
- Actions Taken to Date.
- Comments and Responses on the Draft Nationwide Section 4(f) Evaluation and Determination.
- Examples.

Background on the Nationwide Section 4(f) Evaluation and Determination

The FTA initially anticipated participating in this proposed programmatic evaluation as reflected in the draft Nationwide Section 4(f) Evaluation and Proposed Determination for Federal-Aid Transportation Projects That Have a Net Benefit to a Section 4(f) Property published at 67 FR 77551, on December 18, 2002. The FTA currently utilizes no programmatic evaluation and relies on individual evaluations to satisfy the requirements of Section 4(f) for transit projects that use Section 4(f) properties. Upon further transit program and policy review, the FTA has elected not to participate in this programmatic evaluation and will continue to perform individual Section 4(f) evaluations in all cases.

Proposed federally funded highway projects that would use property from significant publicly owned public parks, recreation areas, or wildlife and waterfowl refuges or from significant historic sites are subject to Section 4(f) of the U.S. Department of Transportation Act of 1966 (Public Law 89–670, 80 Stat. 931, October 15, 1966), a provision now codified in title 49, United States Code, Section 303. Section 4(f) prohibits such use unless the FHWA determines that: (1) There is no feasible and prudent avoidance alternative; and (2) that the project includes all possible planning to minimize harm to the Section 4(f) property. These efforts are normally documented in an individual evaluation or one of four existing nationwide programmatic evaluations. For some FHWA projects, it may be possible to utilize one or more programmatic evaluations that were developed for specific circumstances.[1]

Court decisions, particularly in the 1970s, resulted in strict interpretations of Section 4(f) requirements. Many of these early decisions resulted from large projects that impacted Section 4(f) properties during the peak of Interstate highway construction and expansion. In recent years, however, some courts have provided a more flexible interpretation, responding to the reduction in the severity of impacts and a transportation program that is currently focused more on system preservation and modernization than on expansion.

Programmatic evaluations reduce the processing time and effort necessary to document the analysis and illustrate that the Section 4(f) requirements have been met. Each of the programmatic evaluations contains specific and limiting applicability criteria and findings. For projects that do not meet the specified applicability criteria, the FHWA must prepare and circulate for comment, a draft individual evaluation, which is subject to internal legal sufficiency review prior to approval and circulation of a final individual Section 4(f) evaluation.

Description of Action

This programmatic evaluation facilitates compliance with Section 4(f) requirements for those situations in which there is agreement among the FHWA, the Applicant and the official(s) with jurisdiction over the Section 4(f) property that the transportation use of Section 4(f) property, the measures to minimize harm and the mitigation incorporated into the project will result in a net benefit to the Section 4(f) property. If an agreement on net benefit cannot be reached among the FHWA, the Applicant and the official(s) with jurisdiction over the Section 4(f) property, then this programmatic evaluation cannot be used. This programmatic evaluation may be used, when applicable, for a project of any class of action as defined in 23 CFR 771.115 of the FHWA Environmental Impact and Related Procedures (National Environmental Policy Act (NEPA) regulations).

Why Issue a New Nationwide Programmatic Section 4(f) Evaluation?

Individual evaluations are approved after extensive internal review and interagency coordination. The internal process consists of a review of both a draft and final evaluation by the FHWA Division Office and, in some cases, the FHWA Headquarters Office. In addition, each final individual evaluation undergoes a separate review by the FHWA Office of Chief Counsel to ensure legal sufficiency. Interagency coordination is undertaken on all individual evaluations with the official(s) with jurisdiction over the Section 4(f) property and with the DOI. A draft individual Section 4(f) evaluation is provided for coordination and comment for a minimum of 45 days and a final individual Section 4(f) evaluation is prepared to support the FHWA Section 4(f) determination. In addition, the U.S. Departments of Agriculture (USDA) and Housing and Urban Development (HUD) are consulted on those projects involving a Section 4(f) property for which they have program responsibilities.

The process associated with individual evaluation documentation, review and consultation is time consuming. The process is appropriate for projects that have the potential to substantially impair, through use, the activities, features or attributes that qualify the property for Section 4(f) protection. For other projects, where the use of Section 4(f) property is minor and/or does not result in a substantial impairment of specific qualities that make a property eligible for Section 4(f) protection, the project is still subject to the same thorough and time-consuming process of evaluation, unless it qualifies for a simplified review under one of the existing programmatic evaluations. This programmatic evaluation is intended to address those projects where there is agreement among the FHWA, the Applicant and the official(s) with jurisdiction that, (1) a use of property does not result in a substantial impairment; (2) the project includes all possible planning to minimize harm, including mitigation; and (3) that the cumulative result is an overall improvement and enhancement of the Section 4(f) property.

An understanding of the intent of this programmatic evaluation, applicability requirements and the meaning of net benefit is a prerequisite to agreement.

[1] Final Nationwide Section 4(f) Evaluation and Approval for Federally-Aided Highway Projects With Minor Involvements With Public Parks, Recreational Lands, and Wildlife and Waterfowl Refuges, Issued December 23, 1986, Published in **Federal Register**, August 19, 1987, and can be found at 52 FR 31111.

Final Nationwide Section 4(f) Evaluation and Approval for Federally-Aided Highway Projects With Minor Involvements With Historic Sites, Issued December 23, 1986, Published in **Federal Register**, August 19, 1987, and can be found at 52 FR 31118. Department of Transportation, Federal Highway Administration—Programmatic Section 4(f) Evaluation and Approval for FHWA Projects that Necessitate the Use of Historic Bridges, Issued July 5, 1983, Published in **Federal Register**, August 22, 1983, and can be found at 48 FR 38135.

Negative Declaration/Section 4(f) Statement for Independent Bikeway or Walkway Construction Projects, FHWA Memorandum, May 23, 1977, and can be found at *http://www.environment.fhwa.dot.gov/projdev/4fbikeways.htm.*

Where conflict arises in reaching agreement with the official(s) with jurisdiction, the FHWA should assess the nature of the disagreement to determine whether it is procedural or substantive (related to the applicability criteria of the actual project action) before deciding not to use this programmatic evaluation. If substantive disagreement persists, then this programmatic evaluation cannot be used.

As established in this programmatic evaluation, the Administration will review the specific facts of a project, compare them to the applicability requirements of the programmatic evaluation and determine if it is applicable. When applicable, appropriate supporting documentation will be placed in the project file and/or referenced in the appropriate environmental document. Since this programmatic evaluation was reviewed and determined to be legally sufficient according to the requirements of 23 CFR 771.135(k), the utilization of this programmatic evaluation on specific projects will not require legal sufficiency review under 23 CFR 771.135(k). Similarly, interagency coordination is streamlined, as described in this programmatic evaluation, by consulting only with the official(s) with jurisdiction, and not with DOI, USDA, or HUD, except when those agencies have an official responsibility related to the property or where conversion of the 4(f) property to highway use is encumbered such that, specific subsequent agency action will be required (*e.g.*, lands acquired with Land and Water Conservation Fund Act (LWCFA) assistance, 16 U.S.C. 460*l*(8)(f)(3)). It is estimated that these streamlining steps will reduce processing and approval time for certain projects by 3 to 6 months. Of equal importance is the extent of internal review and interagency coordination, which will be commensurate with the severity of impacts and the potential for enhancement of the Section 4(f) property.

Actions Taken to Date

The draft Nationwide Section 4(f) Evaluation and Proposed Determination for Federal-Aid Transportation Projects That Have a Net Benefit to a Section 4(f) Property was published on December 18, 2002, at 67 FR 77551, requesting public and agency comment (FHWA Docket No. FHWA–2002–13290). The proposed programmatic evaluation was provided specifically to the DOI, the USDA, HUD and the Advisory Council on Historic Preservation (ACHP).

After careful analysis of all comments received, the FHWA has decided to finalize and approve this programmatic evaluation. Minor changes have been made in this final programmatic evaluation to add clarity and incorporate suggested improvements from insightful comments. This decision is based upon the belief that the programmatic evaluation will assure full compliance with the statute while enhancing Section 4(f) properties and reducing duplicative administrative processes for eligible projects. The decision is consistent with congressional streamlining initiatives.

Comments and Responses on the Draft Nationwide Programmatic Section 4(f) Evaluation

The following discussion is a summary of comments received on the draft programmatic evaluation. Responses are provided on how the FHWA considered and addressed the concerns and/or issues raised.

Comments were received from 18 entities, including Federal agencies, two national transportation organizations, one national environmental organization, eight State transportation agencies, one transit agency, two State resource agencies, and two private consulting firms. Commenters included the Department of the Interior (DOI), and the National Park Service (NPS), the American Highway Users Alliance (AHUA), the American Association of State Highway and Transportation Officials (AASHTO), the Sierra Club, the State of California Department of Transportation (CALTRANS), the Maryland State Highway Administration (MDSHA), the Pennsylvania Department of Transportation (PennDOT), the New York State Department of Transportation (NYSDOT), the Missouri Department of Transportation (MODOT), the Texas Department of Transportation (TXDOT), the Wisconsin Department of Transportation (WIDOT), the Washington State Department of Transportation (WSDOT), the Central Puget Sound Regional Transit Authority (Sound Transit), the State of Alabama Historical Commission (AHC), the Wyoming Game and Fish Department (WGF) through its Office of Federal Land Policy, Transportation Environmental Management Inc. (TEM) and the HR Green Company (HR Green). In addition, the FTA provided comments and recommendations for consideration prior to its decision not to be a participant in the programmatic evaluation.

Many comments were general in nature and are summarized and addressed collectively under the following general comment headings: General Comments, Net Benefit, Official(s) with Jurisdiction, and Section 106 Integration. Many comments included recommendations related to a specific section of the programmatic evaluation which are addressed in the section-by-section analysis.

A number of the specific comments received, focused on the overall reform of Section 4(f) and suggested that this programmatic evaluation does not do enough to reform and streamline existing Section 4(f) requirements. All comments and recommendations have been read and considered by the FHWA. These concerns are beyond the scope of this effort and have not been addressed in this document.

General Comments

Comments received demonstrated a need for additional definition of terms used in the final programmatic evaluation. Definitions were added for: ''Administration'', ''Applicant'', ''net-benefit'' and ''officials with jurisdiction.''

''Administration'' refers to the Federal Highway Administration, FHWA Division Administrator or Division Engineer.

''Applicant'' refers to the State Highway Agency or State Department of Transportation, or local governmental agency acting through the State Highway Agency or State Department of Transportation.

A ''net benefit'' is achieved when the transportation use, the measures to minimize harm and the mitigation incorporated into the project results in an overall enhancement of the Section 4(f) property when compared to both the future do-nothing or avoidance alternatives and the present condition of the Section 4(f) property taking into consideration the activities, features and attributes that qualify the property for Section 4(f) protection. A project does not achieve a ''net benefit'' if it will result in a substantial diminishment of specific functions or values that made the property eligible for Section 4(f) protection.

''Official(s) with jurisdiction'' over Section 4(f) property (typically) include: for a park, the Federal, State or local park authorities or agencies that own and/or manage the park; for a refuge, the Federal, State or local wildlife or waterfowl refuge owners and managers; and for historic sites, the State Historic Preservation Officer (SHPO) or Tribal Historic Preservation Officer (THPO), whichever has jurisdiction under Section 106 of the National Historic Preservation Act (16 U.S.C. 470f).

Many commenters expressed overall support for the programmatic evaluation. They generally recognized and noted the potential benefits of the programmatic evaluation in streamlining the procedural requirements of Section 4(f), such as reducing paperwork and internal review, while at the same time, encouraging enhancement of Section 4(f) properties and promoting environmental stewardship.

The guiding principle regarding the use of the programmatic evaluation is that there must be a ''net benefit'' to the Section 4(f) property. The ability of the FHWA, the Applicant and the official(s) with jurisdiction to reach agreement with respect to the impacts, measures to minimize harm, mitigation and that a net benefit will result is inherent in the decision of whether or not the programmatic evaluation is applicable. ''Negotiations'' in this regard, should be no more complicated or require skills other than those required for normal project development and Section 4(f) consultations related to impacts, measures to minimize harm and mitigation.

A situation where the necessary agreement or determination of applicability is substantially difficult to achieve or make may be an indication that an individual Section 4(f) evaluation is appropriate in that case. On the other hand, this situation may be an indication that one or more of the participants lack understanding of the intent of the programmatic evaluation or the individual applicability requirements. As stated above, an understanding of the intent of the applicability and net benefit requirements is a prerequisite to agreement. Where conflict arises in coordinating agreement with the officials with jurisdiction, the FHWA should assess the nature of the disagreement to see if it is procedural or substantive before deciding not to use this programmatic evaluation.

The FHWA is committed to providing additional guidance, if needed, on a case-by-case basis to ensure that misunderstanding about the intent of the programmatic evaluation is not an impediment to its use.

Although only a few comments received can be characterized as negative or in general opposition to this programmatic evaluation, many commenters requested clarification and/or refinement of the language used.

The Sierra Club generally objected to the programmatic evaluation because in its view, it contradicts judicial interpretations of Section 4(f), derails the regulatory safeguards and circumvents the 4(f) mandate that special effort be taken to preserve the natural beauty of the countryside, public park and recreation lands, wildlife and waterfowl refuges, and historic sites. The Sierra Club also suggested that FHWA has provided no evidence that the new programmatic evaluation will result in any tangible benefits to areas currently protected under Section 4(f) and the streamlining approach may severely reduce the number of protected natural areas and historic sites.

This programmatic evaluation is not a waiver or relaxation of any of the Section 4(f) standards or judicial interpretations of the legislative requirements. All existing Section 4(f) legislative provisions remain intact. In addition, the use of the programmatic evaluation will allow an increase in environmental stewardship opportunities resulting in greater protection and enhancement of Section 4(f) protected properties.

The requirement for a documented agreement of the resulting net benefit to a Section 4(f) property will safeguard the preservation provisions of Section 4(f) law by ensuring that there will be an enhancement of the functions and values that originally qualified the property for Section 4(f) protection. There is no less protection afforded by this programmatic evaluation than with an individual evaluation and its application will allow a more efficient process of the regulatory requirements.

The DOI was neutral regarding the advantages of the programmatic evaluation and recommended that FHWA expand on and clarify what ''net benefits'' to a Section 4(f) property means, especially with regard to resources under its jurisdiction. The DOI also noted that that without further clarification the programmatic may not satisfy the statutory mandate to consult with DOI on Section 4(f) issues. In response to this and other similar comments, we have clarified the definition of ''net benefit'' in the final programmatic.

The PennDOT commented that the programmatic would provide some time savings in processes but that it would be limited. The NYSDOT and the TEM offered similar comments regarding limited benefit, suggesting that the procedure for utilizing a programmatic evaluation is the same as that required for an individual evaluation.

The intent of this programmatic evaluation is to address administrative burden when it is in the interest of all parties involved to take an action where a use of Section 4(f) property will result in an enhancement of that property. There may be a limited history of experience with this programmatic evaluation; however, there are many examples of ''missed opportunities'' to benefit or enhance an existing property where a transportation use was imminent.

This programmatic evaluation constitutes an approved evaluation for which the FHWA need only to demonstrate compliance with the criteria contained in the programmatic evaluation. The independent review by the DOI and the USDA or HUD official(s) of the draft and final individual Section 4(f) evaluations and the legal sufficiency review by the FHWA necessary for an individual evaluation are not required for this or other programmatic evaluations. In many instances the time necessary to conduct these regulatory internal reviews for individual Section 4(f) evaluations are not apparent to the parties not directly involved in the evaluation process. Procedurally, the time savings may be limited to 3 to 6 months in normal project development; however, the overall benefit is enough to encourage its use and will result in efforts that enhance Section 4(f) properties while avoiding some procedural steps.

The Sierra Club commented that the proposed changes do not ''streamline'' the Section 4(f) procedural requirements. As an example, the Sierra Club noted that the programmatic evaluation cannot be utilized if a feasible and prudent alternative exists and when a project has no prudent and feasible alternative, the agency with jurisdiction must agree to mitigation measures to ensure the proposed action results in a net benefit. The Sierra Club further opined that under this scenario, the programmatic evaluation expands FHWA's discretion and the review process, without full consideration of benefits or losses to Section 4(f) areas.

As stated above, the programmatic evaluation does not waive any of the existing Section 4(f) requirements including the determination that there are no feasible and prudent avoidance alternatives to the Section 4(f) use of the property, and that the project includes all possible measures to minimize harm to the Section 4(f) property. The savings that are being sought through use of the programmatic evaluation come from eliminating internal reviews within the FHWA and the case-by-case coordination with the DOI and other Federal agencies currently required for individual evaluations. Coordination, consultation and agreement with the officials with jurisdiction are essential components of compliance.

There is an important distinction to be made in understanding the programmatic evaluation and how the agreement of net benefit is reached, documented, and approved by the Administration. Comments received from the Sierra Club and others appear to have interpreted the FHWA as the ''official with jurisdiction.'' This is not the case. For clarification, the definition of ''official(s) with jurisdiction'' was added to the final programmatic evaluation. The Sierra Club's concerns regarding the expansion of agency discretion are unfounded, given that the FHWA must reach an agreement with the official(s) with jurisdiction over the Section 4(f) property in order for the programmatic evaluation to apply. If anything, the role of the officials with jurisdiction is enhanced due to their required participation and agreement on achieving a net benefit.

The MDSHA and the AHC commented that the official(s) with jurisdiction over Section 4(f) property may be the SHPO or THPO and recommended changes to *Applicability,* Item Number 5 to denote that official(s) with jurisdiction may include the SHPO or THPO.

The definition of ''officials with jurisdiction'' has been clarified as to the role of the SHPO or THPO as the official in the case of historic properties. As previously noted, there may be instances where a Section 4(f) property has more than one official with jurisdiction.

The Sierra Club expressed concern that without a coherent set of criteria to measure the impact of the project on the Section 4(f) area itself, the proposed changes alter the FHWA's role in parkland and historic site preservation by placing undue weight on external factors.

The role of the FHWA throughout the history of Section 4(f) has been to protect and preserve specific defined properties. That role or responsibility does not change with this programmatic evaluation; indeed, protection of Section 4(f) properties is enhanced, by providing an incentive to improve the property and a less cumbersome mechanism when agreement on net benefit can be reached.

The FHWA retains the responsibility for determining the applicability of Section 4(f) and of this programmatic evaluation, which is dependent on agreement of net benefit. The FHWA will give deference to the official(s) with jurisdiction to assist in determining whether the project will ''substantially diminish'' the function or values for which Section 4(f) was found to be applicable to the property, and all parties involved must reach agreement as to whether a proposed project will result in a ''net benefit'' to the property. If agreement is not reached, this programmatic evaluation will not apply.

The programmatic evaluation also does not include impact criteria as part of the applicability standards. This was done intentionally to allow the official(s) with jurisdiction, the FHWA and the Applicant flexibility in determining the measures appropriate to each individual property necessary to generate a net benefit. Deference is given to officials with jurisdiction, who have special expertise in the property, to determine positive outcomes where there will be a use of the property by a transportation project.

Through the review of all the comments, it was noted that some questions or confusion might be attributable to the inconsistent use of the terms Section 4(f) ''land'', ''property'' and ''resource'' throughout Section 4(f) regulations, guidance, documents and even the statute itself. For this final programmatic evaluation, the term ''property'' has been used as consistently as possible, when not quoted from or directly related to the language of an existing document.

Net Benefit

Several commenters asked for further clarification on what constitutes a ''net benefit'' and who makes that determination.

The DOI suggested that the term ''net benefits'' is subjective and could potentially lead to counterproductive proposals. DOI recommended that the definition of ''net benefit'' to Section 4(f) property be expanded and clarified.

Both the ACH and the MDSHA questioned how and by whom the determination of ''net benefit'' would be made. Several commenters also recommended that criteria be developed to ensure that people with knowledge about the property have key roles in the determination of net benefit.

There is a wide range of what will constitute a net benefit, which will vary depending on the property and the project situation. In other words, net benefit determination is property and project specific, rather than generally subjective, and the development of criteria would serve to restrict the ability to develop mutually agreeable net benefits. For this reason the FHWA, the Applicant and the official(s) with jurisdiction must work collaboratively to define and agree upon what is reasonable and required to achieve a net benefit to a particular Section 4(f) property, on a case-by-case basis. Each of the participants plays an important role in this joint determination to ensure that individual resource experts will be involved. Net benefit is a joint decision, but it is only one of the prerequisites to application of this programmatic evaluation. Consistent with the responsibilities and authorities provided by Section 4(f) itself, the FHWA will determine whether the proposed action satisfies the applicability criteria for the use of this programmatic evaluation.

The AASHTO recognized one major difference in this programmatic evaluation compared to the existing programmatic evaluations related to historic properties considered under the National Historic Preservation Act. In some cases, this programmatic evaluation could apply where a Section 106 ''adverse effect'' finding has been made. The AASHTO, however, expressed some concern that it would apply only if the project had a net benefit on each individual historic property affected by the project and recommended that the programmatic evaluation allow the net ''benefit'' finding to be made for the project as whole rather than each individual property affected by a project. Similarly the NYSDOT recommended revising the net benefit finding to apply to the project as a whole, as a change more likely to promote environmental stewardship.

As noted earlier, this programmatic evaluation does not allow for the waiver or relaxation of existing Section 4(f) standards or the judicial interpretation of the legislative requirements. As such, each Section 4(f) protected property must continue to be considered individually as is currently required for any project or Section 4(f) evaluation. Generally speaking, impacts and benefits to individual Section 4(f) properties must be considered when applying the Applicability criteria. An individual Section 4(f) property, such as an historic district or park complex, might have multiple components. The net benefit must be achieved for an individual Section 4(f) property and for the functions and values that qualified that property for Section 4(f) protection. Although a historic district may experience a net benefit and be appropriately covered by this programmatic evaluation, each property within the historic district that is individually eligible for the National Register and is used by the project must be considered separately under this programmatic evaluation, if it applies, or in an individual Section 4(f) evaluation.

There can be impacts to the functions and values of the Section 4(f) property,

but these impacts cannot reach a level of ''substantial diminishment'' as determined by the FHWA. This determination will be made in consultation with the official(s) with jurisdiction. For instance, there may be general agreement among the FHWA, the Applicant and the official(s) with jurisdiction that an overall enhancement to a Section 4(f) property is achievable. However, if the official with jurisdiction believes that the functions and values that made the property eligible for Section 4(f) protection will be substantially diminished upon completion of the project, then the FHWA must find that the programmatic evaluation is not applicable and that the protected property requires the preparation of an individual Section 4(f) evaluation.

The AASHTO recommended that the net benefit finding take into account the likely future condition of the historic property if the transportation project is not implemented, *e.g.*, the potential for demolition of the historic property by a private landowner.

The revised definition of net benefit included in the final programmatic evaluation addresses this comment, in part. This determination relies on a comparison of Section 4(f) functions and values of the property without the transportation project and use to determine net benefit.

The WIDOT commented that agreements on what constitutes ''net benefit'' could be difficult to reach among the stakeholders involved.

The WIDOT recognized the potential difficulties that may occur when working out the details sufficiently enough that all officials with jurisdiction are satisfied that a net benefit will result. Because the range of what constitutes a net benefit will vary from property to property, by the official(s) with jurisdiction, and by the policies of both the FHWA and the Applicant, creative measures used to achieve net benefits on a project level should be developed and shared with the larger environmental and transportation community in the form of ''Best Practices.'' The flexibility inherent within the language of the programmatic evaluation provides official(s) with jurisdiction an opportunity and incentive to participate in efforts that maintain and achieve benefits to Section 4(f) properties under their protection. The Applicant and the FHWA are encouraged to communicate the beneficial qualities of the programmatic evaluation with the official(s) with jurisdiction in order to maximize its potential benefit to the Section 4(f) property.

Several commenters noted that the use of the term ''net benefit'' is inconsistent throughout the programmatic evaluation. It was unclear whether there merely needs to be a net benefit, or does the project have to preserve, rehabilitate, enhance, and have a net benefit. It was further noted that in some situations, it would be difficult to argue that the project does all four even though it may have an overall net benefit.

From these comments and others, the FHWA recognizes the need to clarify the term ''net benefit.'' Therefore, as noted above, the definition of net benefit has been modified and simplified for consistency in the final programmatic evaluation. This definition clarifies that the resulting Section 4(f) functions and values of the property are ''better,'' overall, than if the project did not use the Section 4(f) property. The ''net benefit'' determination may be based on a number of approaches to mitigate and minimize harm as long as there is an overall enhancement or betterment from the future do-nothing or avoidance condition.

As previously discussed, further instruction has been provided in this programmatic evaluation on how the net benefit is determined and by whom it is determined.

The NPS expressed concern with the definition of ''net benefit'' and objected to the inclusion of the ''substantial diminishment'' requirement without providing standards for measuring what is or is not substantial.

The subjectivity of individual values and functions of a significant Section 4(f) property demonstrate the variability of impacts, mitigation, and net benefits, thus, providing guidance or strict criteria on this determination may be viewed as overly prescriptive. There is similar subjectivity and context in determining ''substantial diminishment.'' For these reasons, it is important to consider the insight of the official(s) with jurisdiction when it comes to deciding ''net benefit'' and/or ''substantial diminishment'' and the officials with jurisdiction are in the best position to assist in these determinations. Therefore, some deference should be given to the officials with jurisdiction when determining if the project will ''substantially diminish'' the activities, features or attributes that qualify the property for Section 4(f) protection. And this determination is essential to deciding if there is a ''net benefit.'' If agreement on net benefit cannot be reached, this programmatic evaluation will not apply to the property.

Officials With Jurisdiction

Addressing park, recreational, wildlife and waterfowl resources and cultural, historic, and tribal properties within a single nationwide programmatic evaluation has created some confusion when discussing coordination with appropriate individuals or official(s) with jurisdiction. Several comments were received that reflect a general concern about the definition and intended role of the official(s) with jurisdiction.

For example, the AHC asked that the programmatic evaluation clarify who has official jurisdiction over Section 4(f) property and whether it must take the SHPO's advice into consideration.

A substantial effort has been made to clarify language in the final programmatic evaluation. Consistent with existing Section 4(f) regulations and guidance, whichever of the SHPO and/or THPO has responsibility under the Section 106 regulations is considered the official with jurisdiction over an historic property. The FHWA must seek and consider the opinion of the SHPO when determining effect under the Section 106 regulations and would likewise, under Section 4(f), seek the opinion of the SHPO as an official with jurisdiction when determining whether a net benefit will result from the Section 4(f) use of an historic site. In an example of an historic park owned by a municipality that was purchased with funding from the Land and Water Conservation Funds Act, the officials with jurisdiction would be the municipal parks department and the SHPO. All officials with jurisdiction must agree with a net benefit determination to a Section 4(f) property for this programmatic evaluation to apply. Coordination with the NPS would also be required in this case, relative to its responsibilities under the LWCFA, to assist in determining appropriate and acceptable mitigation for the project's Section 4(f) use.

Section 106 Integration

Several commenters expressed a desire to improve the integration of Section 4(f) requirements with those of the Section 106 process. The NYSDOT commented that the programmatic evaluation would do little or nothing to streamline the Section 4(f) process with respect to an historic property. The TEM recommended that the programmatic evaluation ''adopt'' the conclusion of the Section 106 process such that, if a project has been found to have no effect, no adverse effect, or results in a MOU that addresses adverse effects, it should

be exempt from Section 4(f) requirements on that basis.

The current laws and regulations continue to apply. The FHWA has, to the extent consistent with both laws, combined the common elements of the two processes for this programmatic evaluation. Much of the coordination required, the assessment of impacts, and mitigation is basically the same whether intended to comply with NEPA, Section 106 or Section 4(f). An integrated approach that satisfies multiple requirements is consistent with existing FHWA policy to use the NEPA process as the ''umbrella'' under which all environmental and related laws and regulations are addressed. It is within the unique requirements of Section 4(f) that this programmatic evaluation will provide relief in the preparation of a single evaluation rather than a draft and a final, the elimination of certain internal FHWA reviews, and the elimination of project-by-project review by the DOI and the USDA, and the HUD, all of which are now required for an individual Section 4(f) evaluation.

Section-by-Section Analysis

Revisions were made to several sections of the programmatic evaluation based upon either suggestions or comments received. The substantive changes not discussed above are considered in this Section-by-Section Analysis.

Preamble

In response to comments, the Preamble has been revised to improve its consistency with the main body of the programmatic evaluation and to respond to the comments received.

Examples

Several comments were received on the examples provided in the draft to illustrate application and implementation of the programmatic evaluation. These examples have been rewritten to provide further clarity on the use of the programmatic evaluation.

The TXDOT commented on the example of a renovated historic railroad station with the opinion that such renovation, if completed in compliance with the Secretary of Interior's Standards and Guidelines, should result in a ''no adverse effect'' determination, and thus, no 4(f) analysis would be required.

In specific instances, where the purpose of a project was to improve an existing transportation facility, the observation of the TXDOT would be correct (as provided in 23 CFR 771.135(f)). However, for situations not covered by 23 CFR 771.135(f), the FHWA's determination of ''no adverse effect,'' as defined by the regulations implementing the NHPA, and its subsequent concurrence by the SHPO, would not necessarily eliminate the need for a Section 4(f) evaluation. The programmatic evaluation provides additional flexibility in addressing adverse impacts and Section 106 ''adverse effects'' to historic property, where, notwithstanding these impacts, there results an overall enhancement of the Section 4(f) property. In the example cited above, if the Applicant or the FHWA developed plans to renovate the historic railroad station in such a way that the functions and values of the station were enhanced yet the design still did not meet the Secretary of Interior's Standards and Guidelines (*e.g.*, due to changes necessary to comply with the Americans with Disabilities Act), the project might still qualify for this programmatic evaluation. The example has been rewritten for clarity.

The MDSHA commented on the example where a Section 106 adverse effect determination was rendered; that it was not clear how the programmatic evaluation could be applied as the official with jurisdiction would be contradicting itself by agreeing that the action had a beneficial effect.

This result would depend upon the enhancement and mitigation provided and, in the end, how the officials with jurisdiction view the results of that mitigation and enhancement. The FHWA may determine that a project has an adverse effect as defined in the Section 106 regulation on a particular function or value of a Section 4(f) property, but for the programmatic evaluation to apply there cannot be a ''substantial diminishment'' of the activities, features, and attributes that qualify the property for Section 4(f) protection. Not every adverse effect rises to the level of substantial diminishment. For instance, the removal or moving of one contributing component of a historic district may result in an improvement to the access or continuity of the overall property. An example would be the creation of a pedestrian promenade within the historic district that recreates a lost element of the district and improves its economic vitality. Additionally, the Section 106 process does not consider the future do-nothing alternative, yet within this programmatic evaluation the future do-nothing is considered when determining net benefit. Therefore, the SHPO, without conflict, may concur with an adverse effect determination under Section 106, but may agree that the proposed project has a net benefit and will not result in substantial diminishment of the property under this programmatic evaluation.

When the FHWA utilizes this programmatic evaluation, documentation should be requested from the official(s) with jurisdiction that a net benefit will result from implementation of the project and that there is no substantial diminishment of protected activities, features or attributes of the protected property. This agreement may be incorporated into the Section 106 Agreement or other correspondence related to the Section 106 consultation process where the Section 4(f) protected property is historic, however, it should be clear that the Section 4(f) related request is separate and distinct from Section 106 consultation. If a historic property also meets other Section 4(f) criteria (*i.e.*, historic park) and there are multiple officials with jurisdiction, they also have a role in determining net benefit.

In response to the comments received concerning needed guidance and in recognition of the need to further clarify the intended use of this programmatic evaluation, the examples from the draft were rewritten and new examples were added.

Introduction

Referring to the last sentence of the Introduction, the NPS commented that the listing of these few programs in the proposed programmatic evaluation might lead to the incorrect interpretation that the list is all-inclusive rather than a sampling.

Not to mislead any intending user of the programmatic evaluation, the partial listing has been removed and the portion of the all-inclusive discussion stating, ''any other applicable Federal environmental requirements'' was retained.

Applicability

The WIDOT commented that the proposed programmatic evaluation is limited in its scope and will apply only to a small subset of projects.

Initially, utilization of the programmatic evaluation may be limited, but over time it is anticipated that it will have increased use as Applicants, the official(s) with jurisdiction, and the FHWA learn how to incorporate actions beneficial to Section 4(f) properties into transportation projects and realize the reduction in regulatory and internal review times that will result from the application of this programmatic evaluation.

The TXDOT and others requested clarification of language found in

Applicability, Item Numbers 4 and 5, which contain discussions of the roles of ''all parties'' and ''other appropriate parties.'' It was suggested that this be clarified to avoid the appearance of subjectively defining these categories on a case-by-case basis and recommend referencing Section 106 language for ''consulting parties.''

The concern expressed in this comment is recognized and the recommendation has been adopted in part. The language has been reworded to eliminate ''other appropriate parties.'' This change respects the distinction between Section 4(f) and 36 CFR part 800.

The NPS commented that the success of existing ''minor involvement'' programmatic Section 4(f) evaluations has been due to the following factors, (1) they are restricted to improvements on essentially the existing alignment, (2) the maximum acreage limitations are defined, and (3) they do not apply to projects for which an EIS is prepared.

The essence of this programmatic evaluation is distinct from the existing ''minor uses'' programmatic evaluations in that its application is dependent on a resulting positive outcome instead of a minor use. For this reason its application is appropriate and allowable in conjunction with both existing and new alignments. The maximum-acreage-allowable criterion was specified in the programmatic evaluation for minor uses of parks, recreation areas and wildlife and waterfowl refuges to assist in defining minor use in spatial terms. The amount of property used is not an appropriate factor in determining the net benefit and may inappropriately limit application of this evaluation in some cases. Therefore, the application of this programmatic will remain the same so as not to reduce its potential effectiveness and application.

Since this programmatic evaluation can provide the impetus necessary to develop creative measures of avoidance, minimization, and enhancement for impacts to protected Section 4(f) properties, it is appropriate for use with all environmental class of actions, including EISs, in which the applicability criteria is satisfied.

The NPS and DOI noted that the programmatic evaluation does not clearly define the role of agencies holding a contractual or real estate interest in the subject property.

We do not believe it is necessary to specify a criterion that singles out the NPS or any other agency in determining applicability of the programmatic evaluation. Such an encumbrance would not be affected by FHWA's Section 4(f) determination. Where the NPS or another agency has the ''last word'', under another statute, that responsibility remains intact. A sentence was added to the final programmatic evaluation requiring coordination with the appropriate agency, where such encumbrances exist, to clarify the process.

For Section 4(f) properties, other than privately owned historic resources, the FHWA and the Applicant shall pursue with due diligence, during early stages of project development, determination of whether or not the property in question received a LWCFA grant. If the Applicant or the FHWA have concerns about whether a park area might have received a LWCF grant they should contact one of the National Park Service field offices or State Agency, as listed in the ''Contact List'' on the following Web site: *http://www.nps.gov/ncrc/programs/lwcf/protect.html*. Administrators have databases of grant-assisted sites that will help them to determine whether Fund protections apply; also some States have their own grant programs that afford similar protection. Additional information and addresses for National Park Service Offices and State Liaison Officers for the Land and Water Conservation Fund can be found at the following Web site: *http://www.nps.gov/ncrc/programs/lwcf/protect.html*.

The NEPA documentation, project file or Section 4(f) documentation shall include evidence of the determination.

The DOI suggested that ''National Historic Landmarks'' should be explicitly identified as National Register eligible property and that additional stipulations to address situations that involve National Natural Landmarks be added.

Since there is no distinction between National Historic Landmarks and other National Register eligible properties where Section 4(f) is concerned, the draft language is retained. Also, the programmatic evaluation would apply to those National Natural Landmarks that met the statutory definition of a Section 4(f) protected property.

The NPS also expressed concern that the FHWA will have the ''sole responsibility'' for determining whether a public park area will receive a net benefit. The programmatic evaluation requires the FHWA to reach agreement with the officials with jurisdiction; therefore, FHWA will never have the ''sole responsibility'' for determining net benefit.

As stated above, the language in the final programmatic evaluation addresses the concerns of the NPS. If agreement is not reached among the FHWA, the Applicant and official(s) with jurisdiction, then the programmatic evaluation cannot be used. If, for example, the NPS requires full replacement of federally encumbered property pursuant to LWCFA, then that obligation will continue to require at least full replacement of the impacted land as determined under that statute whether or not there is a net benefit finding. This holds true for any necessary provision, whether Federal or State, that relates to the impacts of a Section 4(f) property. This is why early consultation and input from all appropriate official(s) with jurisdiction is necessary and required.

The MDSHA commented on an apparent discrepancy between one of the examples and the *Applicability* section. The MDSHA notes that the *Applicability* section states that the programmatic evaluation may be applied if, among other things, the project does not require the demolition or major alteration of the characteristics that qualify the property for the NRHP. Yet the example of the reconstructed, deteriorated historic feature was deemed appropriate, even given the adverse effect determination.

Changes have been made to the *Applicability* section to address this concern. Additionally, the example has been rewritten for clarity. There is no discrepancy as the example is for a reconstruction of a contributing element, which the SHPO, as the official with jurisdiction, deems to be a net benefit to the property when compared to the do-nothing alternative, which leaves the wall in a deteriorated condition. Even though the FHWA could determine and the SHPO concur that the removal and reconstruction of the wall would be an adverse effect under Section 106, the SHPO or THPO could find that the project results in an overall benefit. The programmatic evaluation allows for impacts of some of the functions and/or values of the property as long as there is a collective improvement and there is no substantial diminishment to those functions and values that originally qualified the property for protection.

Relating this back to the example at hand, even though the wall is considered an important function or value in determining Section 106 significance of the historic property, the reconstruction of the wall is neither considered a substantial diminishment nor a major alteration but rather an improvement over its existing condition, the anticipated condition of the future no-build and the condition of the historic site itself, thereby qualifying as a net benefit.

The MDSHA commented on *Applicability,* Item Number 4, and identified a perceived duplication of Section 106 and Section 4(f) efforts. The MDSHA asked whether an adverse effect on an historic property is obviated by a net benefit to the resource such that, there will not be a need for a Section 106 MOA. The CALTRANS added that the SHPO's or THPO's written determination of no adverse effect under Section 106 should suffice as evidence of written agreement under *Applicability,* Item Number 5 to eliminate the need for additional efforts on the part of the SHPO or THPO.

Where required by 36 CFR part 800, an MOA or Programmatic Agreement would be a prerequisite for Section 4(f) approval under this programmatic evaluation similar to the Final Nationwide Section 4(f) Evaluation and Approval for Federally-Aided Highway Projects with Minor Involvements with Historic Sites and the Programmatic Section 4(f) Evaluation and Approval for FHWA Projects that Necessitate the Use of Historic Bridges. The conditions and measures to achieve a net benefit may be established in the MOA. However, the MOA, or any additional or separate documentation, must clearly record that agreement has been reached among the officials with jurisdiction, the FHWA and the Applicant and all appropriate documentation must be retained for the project record consistent with NEPA project documentation retention practices and policies.

In summation, any written agreement developed as part of the Section 106 process can suffice for the *Applicability* criteria of this programmatic evaluation if such agreements (typically MOAs) include an agreement by the officials with jurisdiction that the project results in a net benefit to a protected Section 4(f) property. However, all the officials with jurisdiction may not want to be party to a Section 106 agreement and other Section 106 parties not necessarily the ''officials with jurisdiction.''

Regarding *Applicability,* Item Number 4, the AHC commented that ''such measures'' are ''vague and weak'' and recommended that this be a stronger, more specific statement.

The language in *Applicability,* Item Number 4 is consistent with existing programmatic evaluations and is retained with minor editorial changes in the final version. The language allows for flexibility that makes the programmatic evaluation as viable a procedural option as possible while being as responsive to the expert opinions of the official(s) with jurisdiction and the varied qualities of the properties they manage.

The NYSDOT commented on the ''substantial diminishment'' requirement related to determining ''net benefit'' in the *Applicability* section. It suggested that the requirement is contrary to the concept of ''net benefit'', weakens the concept and narrows the opportunity to effectively benefit the resource.

Programmatic evaluations by their nature are limited to projects that meet a specific set of facts and applicability requirements. A project that will result in a substantial diminishment of any of the functions or values that originally qualified the property for Section 4(f) protection should be evaluated using an individual evaluation. The wording of this programmatic evaluation is designed to ensure that a net benefit is achieved without substantial diminishment of the functions or values (features or attributes) that make the property eligible for Section 4(f) protection. Still, there is flexibility in determining what function or values are keys to the properties' eligibility for protection and what constitutes a substantial diminishment of those functions and values.

Alternatives

The AHC commented that it is difficult to discern how the programmatic evaluation helps the FHWA when it comes to its avoidance alternatives analysis and the PennDOT recognized that the programmatic evaluation limits the alternatives that must be analyzed and documented.

The PennDOT is correct; the avoidance alternatives that must be considered are all-inclusive. This approach is consistent with the existing programmatic evaluations.

The DOI suggested that the ''Do Nothing Alternative'' be replaced with the term ''No Action Alternative,'' in accordance with NEPA guidance.

To avoid confusion, the term ''Do Nothing Alternative'' will be retained, as it is consistent with the other programmatic evaluations.

The PennDOT recommended that the ''qualitative importance or value'' of each Section 4(f) resource should be considered in determining whether or not an avoidance alternative is feasible and prudent. It further recommended that for historic properties, the condition and ownership should be considered as well.

The programmatic addresses those situations where the transportation use results in an overall enhancement of the property as agreed to by the official(s) with jurisdiction, the FHWA and the Applicant. The ability to benefit the property must be factored into the feasible and prudent determination. The consideration of the avoidance alternative comes from the Section 4(f) statutory requirements, which have not changed. The Section 4(f) legislation addresses historic properties regardless of ownership of the property.

Findings

The DOI recommended revising the first sentence to indicate that to apply the programmatic evaluation to a project, the required no-action and avoidance alternatives must be found not feasible and prudent through a written determination.

The wording has been changed to reflect the comment.

The DOI suggested inserting the phrase ''jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat,'' before the phrase ''substantial damage to wetlands''. The suggested language has been incorporated.

The NYSDOT commented on the proposed language, ''An accumulation of these kinds of problems must be of extraordinary magnitude when compared to the proposed use of the Section 4(f) land to determine that (the avoidance) alternative is not feasible and prudent.'' It was suggested that this approach would seem more valid in the context of a full 4(f) evaluation where there is a net negative effect to a historic property, than in a programmatic evaluation context where the ''net'' effect is positive.

This language is consistent with existing Section 4(f) implementation policy and has been incorporated in essence. The first condition of Section 4(f) use is the determination that no feasible and prudent avoidance alternatives exist. The programmatic evaluation must include this determination in order to facilitate compliance with the statute and regulations. This programmatic evaluation identifies the variables that must be considered when making the determination of feasible and prudent. Application of this programmatic evaluation is optional and an individual evaluation may be prepared at the discretion of the Administration in those cases where it is appropriate.

The AHC asked about how the evidence of no feasible and prudent alternative will be collected and distributed.

Appropriate evidence that no feasible and prudent alternative to the use of Section 4(f) property exists must be a part of the FHWA's administrative record for the project. This supporting

information and determination will be documented in the appropriate NEPA document or project record consistent with current Section 4(f) policy, guidance and the requirements of this programmatic evaluation.

The AHC also asked about what would constitute a ''substantial increase in cost'' and suggested that we include an approximate figure or at least a percentage.

The FHWA, in consultation with the Applicant, will determine what is considered a substantial increase. The language is identical to that used in previous programmatic evaluations.

The AHC commented that Findings 2(e) seem to be intended to play one resource improvement against another's adverse effect.

The statement found in Findings 2(e) is not intended to play one property against another. The purpose of the statement is to give appropriate consideration and weight to the beneficial measures of the project when determining whether an alternative is prudent and feasible.

In regard to item number 2(e), the NPS questioned whether ''a missed opportunity'' to benefit a Section 4(f) property has any relevance in determining whether or not an alternative is feasible and prudent.

Section 4(f) established a two-fold emphasis for the Secretary of Transportation: to protect and to enhance significant resources identified for special consideration. To date, programmatic evaluations have focused on projects with minor impacts to these protected properties. This programmatic evaluation is designed to allow the FHWA, the Applicant and official(s) with jurisdiction over the Section 4(f) properties, to look for opportunities where transportation actions can enhance Section 4(f) properties, even where there is a use of some property. Because a net benefit on a property can only be determined when all parties agree, the programmatic evaluation will only be used when it is deemed appropriate and in the best interests of the protected property. To ensure that 2(e) is not abused or equated to a low bar, we included language to clarify that for a project to qualify for 2(e) there must be a substantial missed opportunity to benefit a Section 4(f) property.

Mitigation and Measures To Minimize Harm

Several commenters indicated a confusion regarding the wording of this section and offered suggestions. The principal reason is the combination of ''Measures to Minimize Harm'' and ''Mitigation Measures.'' When put together, commenters read it as ''Measures to Minimize Harm and Measures to Minimize Mitigation''. Obviously this is not the intent; however, to rectify this misunderstanding the language has been changed to read: ''Mitigation and Measures to Minimize Harm.'' Although, measures to minimize harm are considered mitigation, this language is consistent with the Section 4(f) statute.

Coordination

The NPS recommended that the programmatic evaluation require that all projects be coordinated with the appropriate DOI bureaus.

As noted earlier, for those projects where an agency or bureau of DOI is an official with jurisdiction, or where the LWCFA applies, coordination will be necessary as a procedure in meeting the applicability requirements and approval of this programmatic evaluation.

Another comment questioned the statement regarding the need for the FHWA to coordinate with the United States Coast Guard (USCG) before applying the programmatic evaluation to projects requiring a Section 9 Bridge permit.

When the proposed programmatic evaluation was issued, the USCG was still a part of the USDOT and therefore it had Section 4(f) responsibilities. Since that time, the USCG has been relocated to the U.S. Department of Homeland Security, eliminating its Section 4(f) responsibility. However, the USCG still has responsibility related to issuance of Section 9 Bridge permits. Wording has been changed to remove coordination with the USCG relative to Section 4(f) compliance.

The WIDOT noted that the constructive consultation of transportation officials, the officials with jurisdiction and resource agency staff is encouraged.

Consultation is not only encouraged, it is required. For this programmatic evaluation to be successful, good coordination and consultation are imperative.

Public Involvement

There were no substantive comments regarding this section and no changes have been made.

Approval Procedure

The AHC asked, relative to the last sentence of Item Number 6, if the Advisory Council on Historic Preservation agreed to review all programmatic evaluations.

The last sentence in Item Number 6 of the *Approval Procedures* in the draft programmatic should have been a separate paragraph. The purpose of the statement in the draft was to indicate that the ACHP and other agencies had been given the opportunity to review and comment on the draft. Furthermore, the FHWA consulted with the ACHP, the DOI and the NPS prior to finalizing the programmatic evaluation. To avoid confusion, this statement has been removed from the final programmatic evaluation.

Examples of Intended Use

One example of a net benefit to a historic property would be the reconstruction of a deteriorated or lost historic feature (such as a rock wall or auxiliary building) where mitigation related to Section 106 consultation includes the reconstruction of the feature in a slightly different location because of the design requirements of a needed improvement to the adjacent transportation facility. Consultation pursuant to Section 106 of the National Historic Preservation Act (16 U.S.C. 470f) would likely result in an ''adverse effect'' determination. However, the SHPO, the FHWA, and the Applicant all agree that the reconstruction would enhance those qualities for which the property was determined eligible, even with the removal and replacement of the historically associated feature. In this case, the existing FHWA Final Nationwide Section 4(f) Evaluation and Approval for Federally-Aided Highway Projects with Minor Involvements with Historic Sites would not be applicable, but if SHPO, as the official with jurisdiction, agrees that the impacts do not reach a level of substantial diminishment, the FHWA may determine that this programmatic evaluation would be applicable if the evaluation finds that the use of the property is prudent.

A second example involves a partial or even total relocation of a Section 4(f) property (such as a community park) to a location within the community that would have a greater value and use to that community. In this case, the existing nationwide minor use programmatic could not be used because the take of land would exceed the limitation included in it and would impair the use of the remaining Section 4(f) land. Again, this programmatic evaluation would be applicable if the officials with jurisdiction agree that the partial (or total) relocation would be a net benefit to the park and that the relocation does not result in the substantial diminishment of the activities, feature or attributes for which

the park is protected under Section 4(f). For instance, this programmatic evaluation can apply where the officials with jurisdiction identify a net benefit due to existing inadequate or unsafe access conditions to a park which presently minimizes the use of the park and the partial relocation can provide safe access; or in a situation where a park has minimal public use due to changes in adjacent land use and where the officials with jurisdiction agree that the total relocation will be of greater park or recreational value to the community.

A final example is the rehabilitation of an historic railroad station to maintain its major historic elements and to permit its continued use as a historic transportation facility. In some cases, such rehabilitation, even with considerable sensitivity to the historic character of the resource, cannot be accomplished without a Section 106 adverse effect determination, and neither the regulatory provision at 23 CFR 771.135(f) related to historic transportation facilities nor the historic site programmatic could be used. The adverse effect may be caused, for example, by modifications to provide access for the disabled or by interior reconfiguration to provide retail space to keep the station economically viable as a transportation facility. The SHPO, as the official with jurisdiction, may concur with the FHWA determination of ''adverse effect,'' but may also recognize the net benefits of the restoration of the station and the assurance of its continued use may greatly outweigh the adverse effect, *i.e.*, not substantially diminish the qualities for which the property was determined eligible.

There will be situations when this programmatic evaluation would not apply. For example, the owner of an individually eligible historic building has abandoned the building so that it is likely to continue to deteriorate. The transportation agency proposes to demolish the building for a transportation improvement, and agrees to record the building in accordance with the standards set by the Historic American Building Survey (HABS) prior to its demolition. In the project design year (20 years hence) without the project, the building may be effectively demolished through neglect. In the design year of the project, the building will be demolished but a record of the building will be made. Although having the record of the demolished building is an improvement over not having such a record, it is not a net benefit to the resource, as the resource will no longer exist. Therefore, this programmatic evaluation would not apply because it requires that there be a resource to which a net benefit would result. In this case, an individual Section 4(f) evaluation would be needed. On the other hand, if the same abandoned historic building (contributing component) lies within a large commercial historic district, where the officials with jurisdiction (*i.e.*, the SHPO) concur with an ''adverse effect'' determination pursuant to Section 106 consultation, but determine that the removal of the building with appropriate mitigation will have a net benefit to the historic district as the use of the resource (historic district) by the transportation project will improve access or parking which will likely improve the economic viability of the majority of the historic district, thus determining that the use will not rise to the level of ''substantial diminishment'' of the qualities of the resource. In such a situation, this programmatic evaluation might be applied.

The FHWA recognizes and appreciates the effort of all parties who provided comments for consideration in the development and finalization of this programmatic evaluation.

Authority: 49 U.S.C. 303; 23 U.S.C. 138; 49 CFR 1.48.

Issued on: April 13, 2005.

Mary E. Peters,

Federal Highway Administrator.

The text of the FHWA Programmatic Section 4(f) Evaluation and Approval for Transportation Projects That Have a Net Benefit to a Section 4(f) Property is as follows:

U.S. Department of Transportation
Federal Highway Administration (FHWA)
FINAL

Programmatic Section 4(f) Evaluation and Approval for Transportation Projects That Have a Net Benefit to a Section 4(f) Property

This nationwide programmatic Section 4(f) evaluation (programmatic evaluation) has been prepared for certain federally assisted transportation improvement projects on existing or new alignments that will use property of a Section 4(f) park, recreation area, wildlife or waterfowl refuge, or historic property, which in the view of the Administration and official(s) with jurisdiction over the Section 4(f) property, the use of the Section 4(f) property will result in a net benefit to the Section 4(f) property. Definitions:

''Administration'' refers to the Federal Highway Division Administrator or Division Engineer (as appropriate).

''Applicant'' refers to a State Highway Agency or State Department of Transportation, local governmental agency acting through the State Highway Agency or State Department of Transportation.

A ''net benefit'' is achieved when the transportation use, the measures to minimize harm and the mitigation incorporated into the project results in an overall enhancement of the Section 4(f) property when compared to both the future do-nothing or avoidance alternatives and the present condition of the Section 4(f) property, considering the activities, features and attributes that qualify the property for Section 4(f) protection. A project does not achieve a ''net benefit'' if it will result in a substantial diminishment of the function or value that made the property eligible for Section 4(f) protection.

''Official(s) with jurisdiction'' over Section 4(f) property (typically) include: for a park, the Federal, State or local park authorities or agencies that own and/or manage the park; for a refuge, the Federal, State or local wildlife or waterfowl refuge owners and managers; and for historic sites, the State Historic Preservation Officer (SHPO) or Tribal Historic Preservation Officer (THPO), whichever has jurisdiction under Section 106 of the National Historic Preservation Act (16 U.S.C. 470f).

Applicability

The Administration is responsible for review of each transportation project for which this programmatic evaluation is contemplated to determine that it meets the criteria and procedures of this programmatic evaluation. The information and determination will be included in the applicable National Environmental Policy Act (NEPA) documentation and administrative record. This programmatic evaluation will not change any existing procedures for NEPA compliance, public involvement, or any other applicable Federal environmental requirement.

This programmatic evaluation satisfies the requirements of Section 4(f) for projects meeting the applicability criteria listed below. An individual Section 4(f) evaluation will not need to be prepared for such projects:

1. The proposed transportation project uses a Section 4(f) park, recreation area, wildlife or waterfowl refuge, or historic site.

2. The proposed project includes all appropriate measures to minimize harm and subsequent mitigation necessary to preserve and enhance those features and values of the property that originally qualified the property for Section 4(f) protection.

3. For historic properties, the project does not require the major alteration of

the characteristics that qualify the property for the National Register of Historic Places (NRHP) such that the property would no longer retain sufficient integrity to be considered eligible for listing. For archeological properties, the project does not require the disturbance or removal of the archaeological resources that have been determined important for preservation in-place rather than for the information that can be obtained through data recovery. The determination of a major alteration or the importance to preserve in-place will be based on consultation consistent with 36 CFR part 800.

4. For historic properties, consistent with 36 CFR part 800, there must be agreement reached amongst the SHPO and/or THPO, as appropriate, the FHWA and the Applicant on measures to minimize harm when there is a use of Section 4(f) property. Such measures must be incorporated into the project.

5. The official(s) with jurisdiction over the Section 4(f) property agree in writing with the assessment of the impacts; the proposed measures to minimize harm; and the mitigation necessary to preserve, rehabilitate and enhance those features and values of the Section 4(f) property; and that such measures will result in a net benefit to the Section 4(f) property.

6. The Administration determines that the project facts match those set forth in the Applicability, Alternatives, Findings, Mitigation and Measures to Minimize Harm, Coordination, and Public Involvement sections of this programmatic evaluation.

This programmatic evaluation can be applied to any project regardless of class of action under NEPA.

Alternatives

To demonstrate that there are no feasible and prudent alternatives to the use of Section 4(f) property, the programmatic evaluation analysis must address alternatives that avoid the Section 4(f) property. The following alternatives avoid the use of the Section 4(f) property:

1. Do nothing.

2. Improve the transportation facility in a manner that addresses the project's purpose and need without a use of the Section 4(f) property.

3. Build the transportation facility at a location that does not require use of the Section 4(f) property.

This list is intended to be all-inclusive. The programmatic evaluation does not apply if a feasible and prudent alternative is identified that is not discussed in this document. The project record must clearly demonstrate that each of the above alternatives was fully evaluated before the Administration can conclude that the programmatic evaluation can be applied to the project.

Findings

For this programmatic evaluation to be utilized on a project there must be a finding, given the present condition of the Section 4(f) property, that the do-nothing and avoidance alternatives described in the Alternatives section above are not feasible and prudent. The findings (1, 2, and 3. below) must be supported by the circumstances, studies, consultations, and other relevant information and included in the administrative record for the project. This supporting information and determination will be documented in the appropriate NEPA document and/or project record consistent with current Section 4(f) policy and guidance.

To support the finding, adverse factors associated with the no-build and avoidance alternatives, such as environmental impacts, safety and geometric problems, decreased transportation service, increased costs, and any other factors may be considered collectively. One or an accumulation of these kinds of factors must be of extraordinary magnitude when compared to the proposed use of the Section 4(f) property to determine that an alternative is not feasible and prudent. The net impact of the do-nothing or build alternatives must also consider the function and value of the Section 4(f) property before and after project implementation as well as the physical and/or functional relationship of the Section 4(f) property to the surrounding area or community.

1. *Do-Nothing Alternative.*

The Do-Nothing Alternative is not feasible and prudent because it would neither address nor correct the transportation need cited as the NEPA purpose and need, which necessitated the proposed project.

2. *Improve the transportation facility in a manner that addresses purpose and need without use of the Section 4(f) property.*

It is not feasible and prudent to avoid Section 4(f) property by using engineering design or transportation system management techniques, such as minor location shifts, changes in engineering design standards, use of retaining walls and/or other structures and traffic diversions or other traffic management measures if implementing such measures would result in any of the following:

(a) Substantial adverse community impacts to adjacent homes, businesses or other improved properties; or

(b) Substantially increased transportation facility or structure cost; or

(c) Unique engineering, traffic, maintenance or safety problems; or

(d) Substantial adverse social, economic or environmental impacts; or

(e) A substantial missed opportunity to benefit a Section 4(f) property; or

(f) Identified transportation needs not being met; and

(g) Impacts, costs or problems would be truly unusual, unique or of extraordinary magnitude when compared with the proposed use of Section 4(f) property after taking into account measures to minimize harm and mitigate for adverse uses, and enhance the functions and value of the Section 4(f) property.

Flexibility in the use of applicable design standards is encouraged during the analysis of these feasible and prudent alternatives.

3. *Build a new facility at a new location without a use of the Section 4(f) property.*

It is not feasible and prudent to avoid Section 4(f) property by constructing at a new location if:

(a) The new location would not address or correct the problems cited as the NEPA purpose and need, which necessitated the proposed project; or

(b) The new location would result in substantial adverse social, economic or environmental impacts (including such impacts as extensive severing of productive farmlands, displacement of a substantial number of families or businesses, serious disruption of community cohesion, jeopardize the continued existence of any endangered or threatened species or resulting in the destruction or adverse modification of their designated critical habitat, substantial damage to wetlands or other sensitive natural areas, or greater impacts to other Section 4(f) properties); or

(c) The new location would substantially increase costs or cause substantial engineering difficulties (such as an inability to achieve minimum design standards or to meet the requirements of various permitting agencies such as those involved with navigation, pollution, or the environment); and

(d) Such problems, impacts, costs, or difficulties would be truly unusual or unique or of extraordinary magnitude when compared with the proposed use of the Section 4(f) property after taking into account proposed measures to minimize harm, mitigation for adverse use, and the enhancement of the Section 4(f) property's functions and value.

Flexibility in the use of applicable design standards is encouraged during the analysis of feasible and prudent alternatives.

Mitigation and Measures To Minimize Harm

This programmatic evaluation and approval may be used only for projects where the Administration, in accordance with this evaluation, ensures that the proposed action includes all possible planning to minimize harm, includes appropriate mitigation measures, and that the official(s) with jurisdiction agree in writing.

Coordination

In early stages of project development, each project will require coordination with the Federal, State, and/or local agency official(s) with jurisdiction over the Section 4(f) property. For non-Federal Section 4(f) properties, *i.e.*, State or local properties, the official(s) with jurisdiction will be asked to identify any Federal encumbrances. When encumbrances exist, coordination will be required with the Federal agency responsible for such encumbrances.

Copies of the final written report required under this programmatic evaluation shall be offered to the official(s) with jurisdiction over the Section 4(f) property, to other interested parties as part of the normal NEPA project documentation distribution practices and policies or upon request.

Public Involvement

The project shall include public involvement activities that are consistent with the specific requirements of 23 CFR 771.111, Early coordination, public involvement and project development. For a project where one or more public meetings or hearings are held, information on the proposed use of the Section 4(f) property shall be communicated at the public meeting(s) or hearing(s).

Approval Procedure

This programmatic evaluation approval applies only after the Administration has:

1. Determined that the project meets the applicability criteria set forth in *Applicability* section;
2. Determined that all of the alternatives set forth in the *Findings* section have been fully evaluated;
3. Determined that the findings in the programmatic evaluation (which conclude that the alternative recommended is the only feasible and prudent alternative) result in a clear net benefit to the Section 4(f) property;
4. Determined that the project complies with the *Mitigation and Measures to Minimize Harm* section of this document;
5. Determined that the coordination and public involvement efforts required by this programmatic evaluation have been successfully completed and necessary written agreements have been obtained; and
6. Documented the information that clearly identifies the basis for the above determinations and assurances.

[FR Doc. 05–7812 Filed 4–19–05; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2005–20930 (PDA–31(F))]

Application by American Trucking Associations, Inc. for a Preemption Determination as to District of Columbia Requirements for Highway Routing of Certain Hazardous Materials

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), United States Department of Transportation (DOT).

ACTION: Public notice and invitation to comment.

SUMMARY: FMCSA invites interested parties to submit comments on an application by The American Trucking Associations, Inc. for an administrative determination as to whether Federal hazardous materials transportation law preempts highway routing requirements of the District of Columbia in restricting transportation of certain hazardous materials.

DATES: Comments received on or before June 6, 2005, and rebuttal comments received on or before July 19, 2005, will be considered before an administrative ruling is issued. Rebuttal comments may discuss only those issues raised by comments received during the initial comment period and may not discuss new issues.

ADDRESSES: You may submit comments, identified by DOT DMS Docket Number FMCSA–2005–20930, by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Agency 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 20590–0001. Please submit three copies of written comments.
- *Hand Delivery:* Submit three copies of written comments 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.

Instructions: Comments must refer to Docket Number FMCSA–2005–20930. All comments received will be posted without change to *http://dms.dot.gov*, including any personal information provided. For detailed instructions on submitting comments, see the ''Public Participation'' heading of the **SUPPLEMENTARY INFORMATION** section of this document. For a summary of DOT's Privacy Act Statement or information on how to obtain a complete copy of DOT's Privacy Act Statement please see the ''Privacy Act'' heading of the **SUPPLEMENTARY INFORMATION** section.

Docket: For access to the docket to read the application 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 am and 5 pm, Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. William Quade, Chief, Hazardous Materials Division (MC–ECH), (202) 366–2172; Federal Motor Carrier Safety Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Public Participation

A copy of each comment must also be sent to Richard Moskowitz, Assistant General Counsel, American Trucking Associations, 2200 Mill Road, Alexandria, VA 22314. Certification of sending a copy to Mr. Moskowitz must accompany your comments. (The following format is suggested: ''I certify copies of this comment have been sent to Mr. Moskowitz at the address specified in the **Federal Register**.'')

The DMS is available 24 hours each day, 365 days each year. You can get electronic submission and retrieval help and guidelines under the ''help'' section of the DMS Web site. If you want us to notify you of receiving your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page displaying after receipt of on-line comments.

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov*.

I. Application for a Preemption Determination

The American Trucking Associations, Inc. (''ATA'') has applied for an administrative determination that Federal hazardous material transportation law, 49 U.S.C. 5101 *et seq.*, and FMCSA regulations at 49 CFR part 397, preempt highway routing requirements under the Terrorism Prevention in Hazardous Materials Transportation Emergency Act of 2005 [D.C. Act 16–43, February 15, 2005, 52 CDR 3048] (''DC Act''). The DC Act applies to transportation of certain hazardous materials within a 2.2-mile zone of the United States Capitol Building. The DC Act refers to this zone as the ''Capitol Exclusion Zone.''

A copy of the ATA application for preemption determination is in the docket for this notice. You may view or obtain a copy of the application online by visiting *http://dms.dot.gov*, clicking ''Simple Search'' and entering the last 5 digits of the docket number (20930).

In the application, ATA challenges the following two sections of the DC Act:

(1) Section 4 of the DC Act, titled ''Prohibition on shipments of hazardous materials.'' Section 4 makes it illegal, except in cases of emergency, to transport in the Capitol Exclusion Zone without a permit any of the materials in the list below. Section 4 also makes it illegal in the Capitol Exclusion Zone, without a permit, to operate a vehicle which is capable of containing, and has exterior placarding or other markings indicating it contains, any of these materials:

(a) Explosives of Class 1, Division 1.1, or Class 1, Division 1.2, as designated in 49 CFR 173.2, in a quantity greater than 500 kilograms;

(b) Flammable gasses of Class 2, Division 2.1, as designated in 49 CFR 173.2, in a quantity greater than 10,000 liters;

(c) Poisonous gasses of Class 2, Division 2.3, as designated in 49 CFR 173.2, in a quantity greater than 500 liters, and belonging to Hazard Zones A or B, as defined in 49 CFR 173.116; and

(d) Poisonous materials, other than gasses, of Class 6, Division 6.1, in a quantity greater than 1,000 kilograms, and belonging to Hazard Zones A or B, as defined in 49 CFR 173.133.

Section 3 of the DC Act defines an ''emergency'' as an unanticipated, temporary situation that threatens the immediate safety of individuals or property, as determined by the District of Columbia Department of Transportation.

(2) Section 5 of the DC Act, titled ''Permits.'' Section 5 of the DC Act enables the District of Columbia Department of Transportation to issue a permit authorizing transport of the materials listed in Section 4 if there is no ''practical alternative route''—defined in Section 3 of the DC Act as a route which lies entirely outside the Capitol Exclusion Zone and whose use would not make shipment of the hazardous materials cost-prohibitive. The permit may require the adoption of safety measures, including time-of-day restrictions. Section 5 authorizes the District of Columbia Department of Transportation to collect fees, not to exceed the cost of implementing and enforcing the DC Act, for the issuance of the permits.

In its application for a preemption determination, ATA states the DC Act was enacted without regard to the procedures set forth in the Federal hazardous materials routing regulations. Specifically, ATA asserts the District of Columbia failed to provide the requisite notice and comment period as required by 49 CFR 397.71(b)(2) and failed to hold a public hearing. ATA further states the District of Columbia failed to consult with officials of neighboring jurisdictions as required by 49 CFR 397.71(b)(3). Additionally, ATA asserts the District of Columbia did not engage in the risk analysis required by 49 CFR 397.71(b)(4). Lastly, ATA states the DC Council's testimony and findings include no discussion or analysis of population density or special populations in the area outside the Capitol Exclusion Zone, characteristics of the alternative highways to be used, an analysis of the number of shipments that would be impacted by the DC Act, an analysis of the impact upon emergency response capabilities, consideration of comments and concerns of affected persons, impact upon commerce, delays in transportation, or traffic conditions, including motor vehicle accident experience. ATA points out FMCSA's routing regulations relating to non-radioactive hazardous materials require analysis of these factors prior to enacting a routing restriction.[1]

II. Federal Preemption

Title 49 U.S.C. 5125 includes several preemption provisions. Section 5125(c)(1) allows a State or Indian tribe to establish, maintain, or enforce a highway routing designation over which hazardous material may or may not be transported by motor vehicles, or a limitation or requirement related to highway routing, only if the designation, limitation, or requirement complies with 49 U.S.C. 5112(b).

Section 5112(b) requires the Secretary of Transportation (the Secretary), in consultation with the States, to prescribe by regulation standards for the States and Indian tribes to follow when designating specific highway routes for transportation of hazardous materials. The Secretary has delegated to FMCSA authority and responsibility for highway routing of hazardous materials.[2]

The standards required by 49 U.S.C. 5112(b) for establishing highway routing requirements for non-radioactive hazardous materials are set forth in 49 CFR part 397, subpart C, and apply to any designations established or modified on or after November 14, 1994.[3] A State or Indian tribe must follow FMCSA standards when establishing highway routing requirements for hazardous materials.

The preemption provisions in 49 U.S.C. 5125 carry out Congress's view that a single body of uniform Federal regulations promotes safety in the transportation of hazardous materials. In sec. 2 of the Hazardous Materials Transportation Uniform Safety Act of 1990 (HMTUSA) [Pub. L. 101–615, November 16, 1990, 104 Stat. 3244], Congress underscored the need for uniform regulations relating to transportation of hazardous materials:

* * * (3) many States and localities have enacted laws and regulations which vary from Federal laws and regulations pertaining to the transportation of hazardous materials, thereby creating the potential for unreasonable hazards in other jurisdictions and confounding shippers and carriers which attempt to comply with multiple and conflicting registration, permitting, routing, notification, and other regulatory requirements;

(4) because of the potential risks to life, property, and the environment posed by unintentional releases of hazardous materials, consistency in laws and regulations governing the transportation of hazardous materials is necessary and desirable;

[1] See 49 CFR 397.71(b)(9).

[2] See 49 CFR 1.73(d)(2).

[3] See 49 CFR 397.69(a).

(5) in order to achieve greater uniformity and to promote the public health, welfare, and safety at all levels, Federal standards for regulating the transportation of hazardous materials in intrastate, interstate, and foreign commerce are necessary and desirable.

The Committee on Commerce, Science, and Transportation, when reporting in 1990 on the bill to amend the Hazardous Materials Transportation Act (HMTA) [Pub. L. 93–633 section 112(a), 88 Stat. 2161 (1975)], stated ''The original intent of HMTA was to authorize [DOT] with the regulatory and enforcement authority to protect the public against the risks imposed by all forms of hazardous materials transportation, and to preclude a multiplicity of State and local regulations and the potential for varying as well as conflicting regulations.''[4]

A Federal Court of Appeals has indicated uniformity was the ''linchpin'' in the design of the HMTA, including the 1990 amendments expanding the original preemption provisions.[5] To achieve safety through consistent Federal and State requirements, Congress has also authorized the U.S. Department of Transportation to make grants to States ''for the development or implementation of programs for the enforcement of regulations, standards, and orders'' ''compatible'' with the highway-related portions of the Hazardous Materials Regulations.[6]

III. Preemption Determinations

Title 49 U.S.C. 5125(d) provides for issuance of binding preemption determinations by the Secretary. The Secretary has delegated to FMCSA authority to make determinations of preemption concerning highway routing of hazardous materials[7]. Any directly affected person may apply for a determination whether a requirement of a State, political subdivision or Indian tribe is preempted. The agency must publish notice of the application in the **Federal Register**, and the applicant must not seek judicial relief on that issue for 180 days after the application or until the preemption determination is issued, whichever occurs first. A party to a preemption determination proceeding may seek judicial review of the determination in U.S. district court within 60 days after the determination becomes final.

Preemption determinations are governed by procedures under 49 CFR part 397, Subpart E and 49 U.S.C. 5125. The FMCSA Administrator issues the preemption determination. The preemption determination includes a written statement setting forth the relevant facts and the legal basis for the determination.[8] After the preemption determination is issued, aggrieved persons have 20 days to file a petition for reconsideration.[9] Any party to the proceeding may seek judicial review in a Federal district court.[10]

In making preemption determinations under 49 U.S.C. 5125(d), FMCSA is guided by the principles and policies set forth in Executive Order 13132, titled ''Federalism.''[11] Section 4(a) of Executive Order 13132 directs agencies to construe a Federal statute to preempt State law only when the statute contains an express preemption provision, there is other clear evidence that Congress intended preemption of State law, or the exercise of State authority directly conflicts with the exercise of Federal authority under the Federal statute. Section 5125 includes express preemption provisions, which FMCSA has implemented through its regulations.

Preemption determinations do not address issues of preemption arising under the Commerce Clause of the Constitution or under statutes other than the HMTA unless it is necessary to do so in order to determine whether a requirement is ''otherwise authorized by Federal law.'' A State, local jurisdiction or Indian tribe requirement is not ''otherwise authorized by Federal law'' merely because it is not preempted by another Federal statute.[12]

IV. Public Comments

FMCSA seeks comments on whether 49 U.S.C. 5125 preempts the District of Columbia's highway routing requirements challenged by ATA. Comments should specifically address the preemption criteria detailed in Part II above.

Issued on: April 13, 2005.

Annette M. Sandberg,

Administrator.

[FR Doc. 05–7910 Filed 4–19–05; 8:45 am]

BILLING CODE 4910–EX–P

[4] S. Rep. No. 101–449 (1990), *reprinted in* 1990 U.S.C.C.A.N. 4595, 4596.

[5] *Colorado Pub. Util. Comm'n* v. *Harmon*, 951 F.2d 1571, 1575 (10th Cir. 1991). In 1994, Congress revised, codified and enacted the HMTA ''without substantive change,'' at 49 U.S.C. Chapter 51. [Pub. L. 103–272, 108 Stat. 745].

[6] See 49 U.S.C. 31102(a).

[7] See 49 CFR 1.73(d)(2).

[8] See 49 CFR 397.211.

[9] See 49 CFR 397.211(c) and 397.223.

[10] See 49 U.S.C. 5125(f) and 49 CFR 397.225.

[11] 64 FR 43255 (August 10, 1999).

[12] Colorado Pub. Utilities Comm'n v. Harmon, No. 89–1288 (10th Cir. Dec. 18, 1991), reversing No. 88–Z–1524 (D. Colo. 1989).

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Safety Advisory 2005–02

AGENCY: Federal Railroad Administration (FRA), DOT.

ACTION: Notice of safety advisory.

SUMMARY: The FRA is issuing Safety Advisory 2005–02, which provides information on the potential catastrophic failure of locomotive main reservoir tanks manufactured by R&R Metal Fabricators, Incorporated, and installed on General Electric Transportation System (GETS) locomotives. The GETS has informed FRA that a total of 5,826 suspect main reservoir tanks were manufactured between 1988 and 1995. To date, four of these main reservoir tanks have failed catastrophically while in service, and additional tanks have been removed for leaking through the welded seams.

FOR FURTHER INFORMATION CONTACT: George Scerbo, Railroad Safety Specialist, Motive Power and Equipment Division (RRS–14), FRA Office of Safety Assurance and Compliance, 1120 Vermont Avenue, NW., Washington, DC 20590, telephone: (202) 493–6249 or Darrell Tardiff, Staff Attorney, FRA Office of Chief Counsel, 1120 Vermont Avenue, NW., Washington, DC 20590, telephone: (202) 493–6037.

SUPPLEMENTARY INFORMATION: In January of 2005, FRA became aware of concerns being raised by GETS regarding locomotives with main reservoirs manufactured by R&R Metal Fabricators, Incorporated (R&R). The involved main reservoirs were manufactured between 1988 and 1995. R&R provided 5,826 main reservoirs that were manufactured during this period to GETS. At the time of GETS' notification, four of the suspect reservoirs had ruptured while in service, and the ruptures resulted in rapid splitting and deformation of the tank along the longitudinal weld seam. None of the four failed reservoirs has resulted in any injuries. The GETS has informed FRA that a hazard risk assessment process was utilized and it was determined that corrective action is required as soon as practical (i.e. within 120 days).

On January 18, 2005, GETS provided FRA a list of approximately twenty-seven hundred locomotives (2,700) that have likely been equipped with the suspect main reservoirs. Additional main reservoirs may have been mounted onto GETS locomotives through maintenance and repair. No other manufacturer's locomotives have been

equipped with the suspect main reservoir, and any attempt to do so would require major modifications to the mounting system. All suspect main reservoirs can be identified by a name plate attached to the skin of the tank.

The GETS has informed FRA that it has contacted the affected railroads and has provided them each a list of locomotive road numbers and a gauge to determine if the reservoir is geometrically offset (out of round) and seams misaligned, which may result in high bending stresses that can lead to weld failure. The GETS also published a Field Maintenance Instruction number 24–15309 to assist the railroads in performing the inspections, and provided replacement reservoirs for those failing to pass the gauge inspection. Locomotives that have had the main reservoir tanks inspected will be identified as follows: a blue dot next to the reservoir tank badge plate indicates the tank has passed the test, a red X indicates that the tank has failed and must be replaced. The Association of American Railroads is aware of this safety issue and, in conjunction with its member railroads, is planning to issue an industry-wide ''Early Warning'' letter in the near future.

Recommended Action: In recognition of the need to assure safety, FRA recommends that railroads operating and owning GETS locomotives inspect the main reservoir tanks of such locomotives in service and any main reservoirs in inventory to determine if they were manufactured by R&R Metal Fabricators, Incorporated, between 1988 and 1995. The FRA further recommends that the railroads adhere to GETS' Field Maintenance Instruction number 24–15309 when conducting its inspection of any identified main reservoir tank. If a railroad does not have GETS' field maintenance instruction or the required gauging device, it should contact Mr. Len Varan, GETS Product Manager, at (814) 875–2769.

The FRA may modify this Safety Advisory 2005–02, issue additional safety advisories, or take other appropriate action necessary to ensure the highest level of safety on the nation's railroads.

Issued in Washington, DC on April 15, 2005.

Daniel C. Smith,

Associate Administrator for Safety.

[FR Doc. 05–7943 Filed 4–19–05; 8:45 am]

BILLING CODE 4910–06–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 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 January 13, 2005, and comments were due by March 14, 2005. No comments were received.

DATES: Comments must be submitted on or before May 20, 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: U.S. Merchant Marine Academy Candidate Application for Admission.

OMB Control Number: 2133–0010.

Type of Request: Extension of currently approved collection.

Affected Public: Individuals desiring to become students at the U.S. Merchant Marine Academy.

Forms: KP 2–65.

Abstract: The collection consists of Parts I, II, and III of Form KP 2–65 (U.S. Merchant Marine Academy Candidate Application). Part I of the form is completed by individuals wishing to be admitted as students to the U.S. Merchant Marine Academy.

Annual Estimated Burden Hours: 12,500 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 April 7, 2005.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 05–7903 Filed 4–19–05; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number 2005 20991]

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 INTERLUDE.

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 2005–20991 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 May 20, 2005.

ADDRESSES: Comments should refer to docket number MARAD–2005 20991. 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: Sharon Cassidy, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–5506.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel INTERLUDE is:

Intended Use: ''Personal, private, exclusive and occasional dinner and overnight cruises''

Geographic Region: ''California, Oregon, Washington and Hawaii''

Dated: April 13, 2005.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 05–7904 Filed 4–19–05; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number 2005 20992]

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 KATRINA ANN.

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 2005–20992 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 May 20, 2005.

ADDRESSES: Comments should refer to docket number MARAD–2005 20992. 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: Sharon Cassidy, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–5506.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel KATRINA ANN is:

Intended Use: ''Charter boat (no more than 6 passengers).''

Geographic Region: ''FL, AL, MS, and LA coastal waters.''

Dated: April 13, 2005.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 05–7905 Filed 4–19–05; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: 2005 20990]

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 WOLF.

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 20990 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 May 20, 2005.

ADDRESSES: Comments should refer to docket number MARAD–2005 20990. 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: Sharon Cassidy, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–5506.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel WOLF is:

Intended Use: ''Charter passenger service and sailing instruction''

Geographic Region: ''Maine to North Carolina (summer) and Florida (winter)''

Dated: April 14, 2005.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 05–7908 Filed 4–19–05; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Marine Transportation System National Advisory Council

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice of public meeting; Marine Transportation System National Advisory Council.

SUMMARY: The Maritime Administration announces that the Marine Transportation System National Advisory Council (MTSNAC) will hold a meeting to discuss MTS needs, regional MTS outreach initiatives, the West Coast port congestion issue, Council team assignments, and other issues. A public comment period is scheduled for 8:30 a.m. to 9 a.m. on Thursday, May 5, 2005. To provide time for as many people to speak as possible, speaking time for each individual will be limited to three minutes. Members of the public who would like to speak are asked to contact Richard J. Lolich by April 27, 2005. Commenters will be placed on the agenda in the order in which notifications are received. If time allows, additional comments will be permitted. Copies of oral comments must be submitted in writing at the meeting. Additional written comments are welcome and must be filed by May 12, 2005.

DATES: The meeting will be held on Wednesday, May 4, 2005, from 2 p.m. to 5 p.m. and Thursday, May 5, 2005 from 8:30 a.m. to 5 p.m.

ADDRESSES: The meeting will be held in the Radisson Hotel Sacramento, 500 Leisure Lane, Sacramento, CA 95815. The hotel's phone number is (800) 333–3333.

FOR FURTHER INFORMATION CONTACT: Richard Lolich, (202) 366–4357; Maritime Administration, MAR–830, Room 7201, 400 Seventh St., SW., Washington, DC 20590; *richard.lolich@marad.dot.gov.*

Authority: 49 CFR 1.66

Dated: April 14, 2005.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 05–7907 Filed 4–19–05; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Petition To Modify an Exemption of a Previously Approved Antitheft Device; General Motors Corporation

AGENCY: National Highway Traffic Safety Administration (NHTSA) Department of Transportation (DOT).

ACTION: Grant of a petition to modify an exemption from the parts marking requirements of a previously approved antitheft device.

SUMMARY: On May 15, 1995, this agency granted in full General Motors Corporation's (GM) petition for exemption from the parts-marking requirements of the vehicle theft prevention standard for the Chevrolet Lumina and Monte Carlo vehicle line (*see* 60 FR 25938). On March 29, 1999, the agency granted in full GM's petition for modification of the previously approved antitheft device for the Chevrolet Lumina and Monte Carlo vehicle line. This notice (see 60 FR 25938) acknowledged GM's notification that the nameplate for its Chevrolet Lumina/Monte Carlo line would be changed to the Chevrolet Impala/Monte Carlo line beginning with model year (MY) 2000. This notice also grants in full GM's second petition to modify the exemption of the previously approved antitheft device for that line. NHTSA is granting GM's petition to modify the exemption because it has determined, based on substantial evidence, that the modified antitheft device described in GM's petition to be placed on the vehicle line as standard equipment, is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements.

DATES: The exemption granted by this notice is effective beginning with model year (MY) 2006.

FOR FURTHER INFORMATION CONTACT: Ms. Rosalind Proctor, Office of International Policy, Fuel Economy and Consumer Programs, NHTSA, 400 Seventh Street, SW., Washington, DC 20590. Ms. Proctor's telephone number is (202) 366–0846. Her fax number is (202) 493–2290.

SUPPLEMENTARY INFORMATION: On May 15, 1995, NHTSA published in the **Federal Register** a notice granting a petition from GM for an exemption from the parts-marking requirements of the vehicle theft prevention standard for the Chevrolet Lumina (and Monte Carlo) vehicle line beginning with the 1996 model year. The Chevrolet Lumina (and Monte Carlo) was equipped with the PASS-Key II antitheft device (*see* 60 FR 25938). On March 29, 1999, NHTSA published in the **Federal Register** a notice granting in full GM's petition for modification of the previously approved PASS-Lock antitheft device for the Chevrolet Lumina and Monte Carlo vehicle line beginning with the 2000 model year. Additionally, GM informed the agency of its planned nameplate change for the Chevrolet Lumina and Monte Carlo to the Chevrolet Impala/Monte Carlo beginning with model year (MY) 2000 (*see* 64 FR 14963).

This notice grants in full GM's February 15, 2005 second petition to modify the exemption of the previously approved antitheft device for the MY 2006 Chevrolet Impala/Monte Carlo. GM's February 15, 2005 submission is a complete petition, as required by 49 CFR part 543.9(d), in that it meets the general requirements contained in 49 CFR part 543.5 and the specific content requirements of 49 CFR part 543.6. GM's petition provides a detailed description of the identity, design and location of the components of the antitheft system proposed for installation beginning with the 2006 model year.

GM described the MY 1996 device (PASS-Key II) installed on the Impala/Monte Carlo as a passively activated device. It also stated that the device utilized an electrically-coded ignition key, an ignition lock-cylinder and a decoder module. GM stated that the MY 2000 device (PASS-Lock) provides the functionality of its ''PASS-Key'' devices but features a coded-lock cylinder instead of an electrically-coded ignition key. When the electronic sensor detects proper lock rotation, it sends a code to the body function controller. If the correct code is received, the controller enables fuel and starting of the vehicle. If an incorrect code is received, the controller disables fuel and starting of the vehicle.

In GM's MY 2006 petition to modify the exemption, it stated that the Chevrolet Impala/Monte Carlo vehicle

line will be equipped with the PASS-Key III+ theft deterrent device. The PASS-Key III+ device will continue to provide protection against unauthorized starting and fueling of the vehicle device. Components of the modified antitheft device include a special ignition key and decoder module. The conventional mechanical code of the key will continue to unlock and release the transmission lever. Before the vehicle can be operated, the key's electrical code must be recognized and properly decoded by the PASS-Key III+ control module. The ignition key will contain electronics molded into the head of the key. The device's electronics receive energy from the control module, and upon receipt of the data, the key will calculate a response to the data using secret information and an internal encryption algorithm. The response will then be transmitted back to the vehicle.

The controller module translates the radio frequency signal received from the key into a digital signal and compares the received response to an internally calculated value. If the values match, the key is recognized as valid, and a vehicle security password (one of 65,534), is transmitted through a serial data link to the engine control module to enable fuel and starting of the vehicle. If an invalid key code is received, the PASS-Key III+ controller module will send a disable password to the engine control module through the serial data bus, and starting, ignition and fuel will be inhibited. In the event the engine control module does not receive a password signal from the PASS-Key III+ controller, engine operation will remain inhibited. GM also stated that the PASS-Key III+ device has the capability of producing billions of codes, requiring centuries for someone to scan through them to allow theft of a vehicle.

GM stated that although its modified antitheft device provides protection against unauthorized starting and fueling of the vehicle, it does not provide any visible or audible indication of unauthorized entry by means of flashing vehicle lights or sounding of the horn. Since the system is fully operational once the vehicle has been turned off, specific visible or audible reminders beyond key removal reminders have not been provided.

Based on comparison of the reduction in the theft rates of GM vehicles using a passive theft deterrent device with an audible/visible alarm system to the reduction in theft rates for GM vehicle models equipped with a passive antitheft device without an alarm, GM finds that the lack of an alarm or attention attracting device does not compromise the theft deterrent performance of a system such as PASS-Key III+. The agency has previously agreed with the finding that the absence of a visible or audible alarm has not prevented these antitheft devices from being effective protection against theft.

In order to ensure the reliability and durability of the device, GM conducted tests based on its own specified standards. GM provided a detailed list of tests conducted and believes that its device is reliable and durable since the device complied with its specified requirements for each test. The tests conducted included high and low temperature storage, thermal shock, humidity, frost, salt fog, flammability, altitude, drop, shock, random vibration, dust, potential contaminants, connector retention/strain relief, terminal retention, connector insertion, crush, ice, immersion and tumbling. Additionally, GM stated that the design and assembly processes of the PASS-Key III+ device and components are validated for a vehicle life of 10 years and 150,000 miles of performance.

GM compared its MY 2006 antitheft device with devices which NHTSA has already determined to be as effective in reducing and deterring motor vehicle theft as would compliance with the parts-marking requirements. To substantiate its beliefs as to the effectiveness of the new device, GM compared the MY 2006 modified device to its ''PASS-Key''-like systems. GM indicated that the theft rates, as reported by the Federal Bureau of Investigation's National Crime Information Center, are lower for GM models equipped with the ''PASS-Key''-like systems which have exemptions from the parts-marking requirements of 49 CFR part 541, than the theft rates for earlier models with similar appearance and construction which were parts-marked. Based on the performance of the PASS-Key, PASS-Key II, and PASS-Key III systems on other GM models, and the advanced technology utilized by the modification, GM believes that the MY 2006 modified antitheft device will be more effective in deterring theft than the parts-marking requirements of 49 CFR part 541.

On the basis of this comparison, GM stated the antitheft device (PASS-Key III+) for model years 2006 and later will provide essentially the same functions and features as found on its MY 1996–2005 ''PASS-Key''-like devices and therefore, its modified device will provide at least the same level of theft prevention as parts-marking. GM believes that the antitheft device proposed for installation on its MY 2006 Chevrolet Impala/Monte Carlo vehicle line is likely to be as effective in reducing thefts as compliance with the parts-marking requirements of part 541.

The agency has evaluated GM's MY 2006 petition to modify the exemption for the Chevrolet Impala/Monte Carlo vehicle line from the parts-marking requirements of 49 CFR part 541, and has decided to grant it. It has determined that the PASS-Key III+ system is likely to be as effective as parts-marking in preventing and deterring theft of these vehicles, and therefore qualifies for an exemption under 49 CFR part 543. The agency believes that the modified device will continue to provide four of the five types of performance listed in Section 543.6(b)(3): promoting activation; preventing defeat or circumventing of the device by unauthorized persons; preventing operation of the vehicle by unauthorized entrants; and ensuring the reliability and durability of the device.

NHTSA suggests that if the manufacturer contemplates making any changes the effects of which might be characterized as de minimis, it should consult the agency before preparing and submitting a petition to modify.

Authority: 49 U.S.C. 33106; delegation of authority at 49 CFR 1.50.

Issued on: April 14, 2005.

Stephen R. Kratzke,

Associate Administrator for Safety Performance Standards.

[FR Doc. 05–7814 Filed 4–19–05; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34685]

D&I Railroad Company—Trackage Rights Exemption—BNSF Railway Company

BNSF Railway Company (BNSF), pursuant to supplemental agreement Nos. 1 and No. 2 entered into between BNSF and D&I Railroad Company (D&I), has agreed to grant certain non-exclusive trackage rights to D&I over BNSF's rail line between milepost 145.91 and milepost 145.45 on BNSF's Corson Subdivision, as well as between milepost 0.0 and milepost 1.09 on BNSF's Madison Subdivision, in Sioux Falls, SD, a total distance of approximately 1.55 miles. D&I will operate its own trains with its own crews over the trackage.

The purpose of the trackage rights is to provide D&I with a route to replace trackage being removed in connection with a redevelopment project by the City of Sioux Falls.

D&I indicates that consummation of this transaction was scheduled to occur on or after April 7, 2005.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34685, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Jack Parliament, P.O. Box 5829, Sioux Falls, SD 57117–5829.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: April 12, 2005.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 05–7768 Filed 4–19–05; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Departmental Offices; Debt Management Advisory Committee Meeting

Notice is hereby given, pursuant to 5 U.S.C. App. 2, § 10(a)(2), that a meeting will be held at the Hay-Adams Hotel, 16th and Pennsylvania Avenue, NW., Washington, DC, on May 3, 2005 at 2:45 p.m. of the following debt management advisory committee:

Treasury Borrowing Advisory Committee of The Bond Market Association (''Committee'')

The agenda for the meeting provides for a charge by the Secretary of the Treasury or his designate that the Committee discuss particular issues, and a working session. Following the working session, the Committee will present a written report of its recommendations. The meeting will be closed to the public, pursuant to 5 U.S.C. App. 2, § 10(d) and Pub. L. 103–202, § 202(c)(1)(B)(31 U.S.C. 3121 note).

This notice shall constitute my determination, pursuant to the authority placed in heads of agencies by 5 U.S.C. App. 2, § 10(d) and vested in me by Treasury Department Order No. 101–05, that the meeting will consist of discussions and debates of the issues presented to the Committee by the Secretary of the Treasury and the making of recommendations of the Committee to the Secretary, pursuant to Pub. L. 103–202, section 202(c)(1)(B). Thus, this information is exempt from disclosure under that provision and 5 U.S.C. 552b(c)(3)(B). In addition, the meeting is concerned with information that is exempt from disclosure under 5 U.S.C. 552b(c)(9)(A). The public interest requires that such meetings be closed to the public because the Treasury Department requires frank and full advice from representatives of the financial community prior to making its final decisions on major financing operations. Historically, this advice has been offered by debt management advisory committees established by the several major segments of the financial community. When so utilized, such a committee is recognized to be an advisory committee under 5 U.S.C. App. 2, § 3.

Although the Treasury's final announcement of financing plans may not reflect the recommendations provided in reports of the Committee, premature disclosure of the Committee's deliberations and reports would be likely to lead to significant financial speculation in the securities market. Thus, this meeting falls within the exemption covered by 5 U.S.C. 552b(c)(9)(A).

Treasury staff will provide a technical briefing to the press on the day before the Committee meeting, following the release of a statement of economic conditions, financing estimates and technical charts. This briefing will give the press an opportunity to ask questions about financing projections and technical charts. The day after the Committee meeting, Treasury will release the minutes of the meeting, any charts that were discussed at the meeting, and the Committee's report to the Secretary.

The Office of Debt Management is responsible for maintaining records of debt management advisory committee meetings and for providing annual reports setting forth a summary of Committee activities and such other matters as may be informative to the public consistent with the policy of 5 U.S.C. § 552(b). The Designated Federal Officer or other responsible agency official who may be contacted for additional information is Jeff Huther, Director, Office of Debt Management, at (202) 622–1868.

Dated: April 13, 2005.

Timothy Bitsberger,

Assistant Secretary, Financial Markets.

[FR Doc. 05–7841 Filed 4–19–05; 8:45 am]

BILLING CODE 4810–25–M

Corrections

Federal Register

Vol. 70, No. 75

Wednesday, April 20, 2005

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 110

[CGD05–03–036]

RIN 1625–AA01

Anchorage Grounds; Baltimore Harbor Anchorage Project

Correction

In rule document 05–6956 beginning on page 17898 in the issue of Friday, April 8, 2005, make the following correction:

§ 110.158 [Corrected]

On page 17900, in the first column, in § 110.158(a)(1)(i), in the table, under the column ''*Latitude*'', in the fourth entry,

''39°14″47.90″ N''

should read

''39°14′47.90″ N''.

[FR Doc. C5–6956 Filed 4–19–05; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Wednesday,
April 20, 2005

Part II

Department of Transportation

Office of the Secretary

14 CFR Part 382
Nondiscrimination on the Basis of Disability in Air Travel; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Part 382

[Docket No. OST–2005–20952]

Nondiscrimination on the Basis of Disability in Air Travel

AGENCY: Office of the Secretary (OST), U.S. Department of Transportation (DOT).

ACTION: Request for Comments; Draft Technical Assistance Manual.

SUMMARY: On April 5, 2000, the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR–21) required DOT to provide a technical assistance manual to air carriers and individuals with disabilities concerning their rights and responsibilities under the Air Carrier Access Act and DOT regulations. Several years after the enactment of AIR–21, DOT received funding to develop the Technical Assistance Manual (TAM). This TAM responds to a Congressional mandate and incorporates input from stakeholders. The TAM is being published in the **Federal Register** to insure a full opportunity for public comment before the document is published in final form.

DATES: Comments must be received on or before 30 days from the date of publication in the **Federal Register**. The Department will consider late-filed comments only to the extent practicable.

ADDRESSES: Please include the docket number of this document in all comments submitted to the docket. Written comments should be sent to Docket Clerk, Department of Transportation, 400 7th Street, SW., Room PL–401, Washington, DC 20590. For confirmation of the receipt of written comments, commenters may include a stamped, self-addressed postcard. The Docket Clerk will date-stamp the postcard and mail it back to the commenter. Comments will be available for inspection at this address from 10 a.m. to 5:30 p.m., Monday through Friday. Comments can also be reviewed through the Dockets Management System (DMS) pages of the Department's Web site *(http://dms.dot.gov)*. Commenters may also submit comments electronically. Instructions appear on the DMS Web site.

FOR FURTHER INFORMATION CONTACT: Mike Spollen or Omar Guerrero, Office of the Assistant General Counsel for Aviation Enforcement and Proceedings, 400 7th Street, SW., Room 4116, Washington, DC 20590. Phone: (202) 366–9349; TTY: 1–800–455–9880; Fax: (202) 366–7152. E-mail: *mike.spollen@dot.gov* or *omar.guerrero@dot.gov.*

SUPPLEMENTARY INFORMATION:

Background

On April 5, 2000, the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR–21) amended the Air Carrier Access Act (ACAA) and required, among other things, that DOT provide a technical assistance manual to air carriers and individuals with disabilities concerning their rights and responsibilities under the ACAA and 14 CFR part 382 (Part 382). See 49 U.S.C. 41705(c). Responding to this legislative mandate, in September 2003, DOT awarded a contract to the Key Bridge Foundation (KBF) to create a TAM and model training program (MTP) relating to air travel by passengers with disabilities.

In addition, AIR–21 extended the ACAA to cover foreign air carriers. Although a final rule modifying Part 382 to cover foreign air carriers has not yet been issued, a notice of proposed rulemaking (NPRM) proposing to extend the provisions of Part 382 to foreign carriers, among other revisions to Part 382, was published on November 4, 2004. 69 FR 64364. The public comment period on the NPRM closed on March 4, 2005. 70 FR 4058. The NPRM proposing to modify Part 382 to cover foreign air carriers is a separate rulemaking and completely distinct from the publication of this TAM. If the NPRM proposals are adopted, however, it will necessitate significant revisions to the TAM, which is based on the current rule.

In addition to the NPRM revising Part 382 and extending it to cover foreign air carriers, the Department is also currently working on two separate NPRMs which address possible additional accommodations for: (1) Passengers who are deaf, hard of hearing and deaf-blind; and (2) passengers who require inflight medical oxygen. Any final rules resulting from these two NPRMs will also necessitate changes to the TAM.

Purpose of the Technical Assistance Manual

The TAM is designed to serve as an authoritative source of information about the services, facilities, and accommodations required by the ACAA and the provisions of Part 382. The manual does not expand air carriers' legal obligations or establish new requirements under the law. The primary purpose of the manual is to provide guidance to air carriers' employees and contractors who provide services, facilities, and accommodations to passengers with disabilities. The manual should give air carriers a better understanding of their responsibilities under the law and a greater awareness about the perspective of an air traveler with a disability, particularly through Chapter 7 titled ''Interacting with People with Disabilities''. This manual is also designed to provide air travelers with disabilities useful information about their rights under the ACAA and Part 382.

Development of the Technical Assistance Manual

In connection with the development of the TAM, DOT and KBF consulted and held meetings with representatives from the disability community, air carriers, and contractors providing disability-related services to air carriers. Prior to this publication of the TAM in the **Federal Register**, a preliminary draft was shared with these stakeholders for their initial review and comment. In early November 2004, KBF posted a draft of the TAM on its Web page at *http://www.airtravelrights.info* and solicited written comments on the draft from a wide range of stakeholders. Those written comments have been thoroughly considered by DOT and incorporated where appropriate.

The TAM is a guidance document which contains an overview of part 382 and provides examples of how the law applies to different factual scenarios. The manual follows the chronological path of an air traveler with a disability from making a reservation through the completion of the trip. The manual also addresses the complaint resolution process, should an air traveler with a disability decide to make a disability-related complaint. In addition, the TAM contains a separate chapter on sensitivity and awareness issues when interacting with people with disabilities. This final chapter of the TAM contains general tips and also tips for communicating and interacting with individuals with specific types of disabilities.[1] Finally, the TAM contains six appendices providing additional information and, in some cases, resources for specific audiences. Organizing the information in this sequential manner makes it easier for

[1] When the TAM is published in its final form, it will contain an Alphabetical Index and a part 382 Index as well as specific page numbers for the various subject areas listed in the Table of Contents. However, because the pagination of the TAM is not yet final, the Table of Contents simply lists the topics covered in the TAM and the indices are not included in this publication of the document.

employees and contractors of air carriers—as well as air travelers with disabilities—to find the information most relevant and useful to them.

Discussion of Stakeholders' Comments

DOT received comments from a broad range of stakeholders such as air carriers, industry-related associations, and disability community organizations. Specifically, DOT received comments from (i) one group made up of four trade associations for air carriers (Air Transport Association of America (ATA), Regional Airline Association (RAA), National Air Carrier Association (NACA), and Air Carrier Association of America (ACA)); (ii) five air carriers (JetBlue Airways, MN Airlines, LLC d/b/a Sun Country Airlines, Continental Airlines, SkyWest Airlines, and Delta Air Lines); (iii) six disability community organizations (Association of Blind Citizens, Paralyzed Veterans of America, Self Help for Hard of Hearing People, National Association of the Deaf, United Spinal Association, and International Association of Assistance Dog Partners); (iv) two members of the public; and (v) the Access Board. DOT read and considered each comment fully. Indeed, DOT has accommodated almost all of the stakeholders' comments. Below is a summary of the comments DOT received on the overall document and the reasons that DOT decided to accommodate or not to accommodate those comments.

1. General Comments

DOT received general comments on the TAM conveying: (i) An overall positive impression of the TAM with requests for additional and different examples; (ii) some confusion about the difference between the NPRM on foreign air carriers issued in November 2004 and this TAM; (iii) questions about the organization of the information in the TAM and concern that there may be some redundancy; and (iv) a recommendation for standard training in connection with the TAM.

Most of the commenters seemed to find the document to be of high-quality and the issues to be thoroughly presented. In particular, a number of stakeholders remarked on the usefulness of the examples throughout the TAM where specific provisions of part 382 are applied to factual scenarios, the frequently asked questions and answers section of the TAM as well as the sensitivity and awareness components of the TAM. With respect to the examples, a few stakeholders suggested additional examples and sought a change to the facts contained in certain existing examples.

Several stakeholders noted some redundancy within the TAM, *i.e.*, certain subjects are addressed in more than one section of the manual. Moreover, one disability community organization representative suggested addressing this issue by coding certain sections of the TAM to reflect which type of carrier personnel should be knowledgeable about a particular section.

Many stakeholders sought some modification of the provisions of part 382 itself. Moreover, the air carrier associations and several carriers expressed concern that publication of the TAM at this time would be premature and suggested delaying its publication pending the conclusion of the NPRM proposing to extend coverage of part 382 to foreign carriers. They also sought assurances from DOT that the TAM would not expand air carriers' legal obligations under part 382, the TAM's use would not be mandatory, and DOT would not pursue enforcement action against any carrier determined to be out of compliance with part 382 in connection with its cooperation in the development of the TAM. Finally, two commenters expressed the need for a standard, basic training session for part 382 to be used by all air carriers.

DOT Response: Generally, DOT does not believe that it would be advantageous to add new examples or change the facts contained in the existing examples as each example addresses a specific issue that DOT's Office of the Assistant General Counsel for Aviation Enforcement and Proceedings (Enforcement Office), the office responsible for ensuring that the regulated airlines comply with the ACAA and part 382, has determined to be a priority. Also, the examples, as written, are straightforward and brief. DOT does recognize that the TAM does not cover all circumstances that occur with air travelers with disabilities. However, rather than adding new examples, DOT has incorporated additional frequently asked questions and answers in Appendix III.

With regard to comments concerning redundancy in the TAM, DOT recognizes that following the path of a trip requires raising a particular topic more than once, *e.g.*, service animals come up in the advance notice section as well as later in the section about seating assignments and accommodations. The same subject may appear in different sections, but each subject is discussed in the context of the particular stage of the trip. Each section of the TAM is designed to ''stand alone'' (*e.g.*, a carrier employee may only need to read the sections covering his or her specific job functions) and contains cross references to other sections, when necessary. Finally, DOT notes that it decided not to use a coding system approach and opted for the present chronological layout because it permits the reader easy access to relevant sections and subject areas upon which he or she may specifically wish to focus. The Alphabetical Index and part 382 Index should also be helpful to the reader.

DOT appreciates the reason that various stakeholders recommended that the publication of the TAM be delayed until the rulemaking regarding part 382 has been completed. However, there has already been too lengthy a delay in the publication of this TAM. Congress required DOT to provide a technical assistance manual to air carriers and individuals with disabilities in April 2000, and it is likely that the rulemaking regarding part 382 will not be finalized until 2006. Therefore, DOT opts not to delay completion of the TAM. The TAM will be revised, as needed, after the rulemaking is completed.

With respect to concerns expressed by stakeholders about situations where DOT becomes aware that a carrier is not in compliance with the ACAA and part 382 through its cooperation in the development of the TAM, DOT restates the position set forth in a December 16, 2003, letter to ATA, RAA, NACA, and ACA that it will consider enforcement action, ''only if a carrier, after being given notice and a chance to comply, does not come into compliance with the ACAA and part 382.''

For those stakeholders recommending a standard training course in connection with the TAM, DOT is pleased to announce that it is currently working with KBF to develop a model training program (MTP) using the TAM as a training tool and promoting it as a resource on the job for employees and contractors of air carriers. The MTP will integrate ''best practices'' from part 382 training models currently used by air carriers. In addition, the MTP will incorporate techniques to supplement air carriers' part 382 training models. The MTP will also use the TAM as a framework, including the appendices, and emphasize the value of the manual as a practical guide for both employees and contractors of air carriers as well as for air travelers with disabilities.

2. Chapter 1: Understanding How To Use This Manual

Several commenters suggested revising the definition of ''assistive device.'' For example, one carrier sought a ''reasonableness'' standard, especially where limited storage space is available

for assistive devices. One disability organization suggested adding examples of devices to the definition of assistive device. Another carrier sought to streamline the definition of ''service animal'' to conform to the explanation of service animals later in the TAM. This carrier also suggested adding a definition for ''emotional support animal.''

DOT Response: Although DOT has clarified the definition of an assistive device, it handles inquiries about what type of device or equipment constitutes an assistive device on a case-by-case basis. Any piece of equipment that assists a passenger with a disability in carrying out a major life activity qualifies as an assistive device. DOT does explain in the TAM that an assistive device may include medical devices, medications, and bags or cases used to carry them. DOT has also streamlined the language regarding service animals in the TAM to ensure that the definition of a service animal as used throughout the TAM is consistent with the definition of a service animal provided in Appendix VI titled ''DOT Guidance Concerning Service Animals in Air Transportation'' published on May 9, 2003. It is important to keep in mind that, while the TAM is the appropriate vehicle under which to clarify or explain existing definitions, it would not be appropriate for DOT to change an existing definition set forth in part 382 through the TAM. Revisions to existing definitions can only be done through a rulemaking process such as the NPRM proposing to extend part 382 to foreign carriers.

3. Chapter 2: Learning the Basics About the Law Protecting Air Travelers With Disabilities

Several commenters sought to add or modify specific language, *e.g.*, removal of the phrase ''or disease'' from the discussion of ''substantial limitation,'' the substitution of the term ''psychiatric illness'' for ''mental illness,'' and what constitutes ''timely'' enplaning and deplaning assistance. In addition, several carriers expressed concern that the TAM implies that carriers are required to accommodate more than one wheelchair in the cabin of the aircraft.

One carrier also expressed concern that the statement about allowing a service animal to sit in close proximity to its user, as written, could be interpreted to mean that the service animal can sit anywhere close to its user. This carrier indicated that the passenger should be aware that the service animal must ''sit'' and not ''stand'' during the flight.

DOT Response: DOT respectfully declines to modify the cited phrases and refers commenters to the preamble of the originally issued part 382 regulation dated March 6, 1990, for a detailed discussion on a number of issues and clarification of certain definitions. 55 FR 8027. In addition, such definitional or language modifications would be more appropriate for consideration in a rulemaking process.

DOT has modified the language in the TAM regarding stowage of passengers' wheelchairs in the cabin of the aircraft because part 382 may require that more than one passenger's wheelchair be stowed in the cabin. Specifically, § 382.21(a)(2) requires that aircraft of a certain size and age have a space to stow at least one passenger's folding wheelchair in the cabin. In addition, § 382.41(e)(1) requires carriers to permit passengers to stow wheelchairs or parts of wheelchairs in the overhead bin or under seats, consistent with FAA safety regulations. Finally, § 382.41(e)(2) provides that if a closet or other approved stowage area is provided in the cabin for carry-on items and if that space would accommodate a wheelchair, then the carrier must designate priority stowage space for at least one passenger's folding wheelchair. Therefore, when these sections are read together, a carrier could be required to accommodate more than one wheelchair in the cabin.

With respect to the seating of a passenger accompanied by a service animal, DOT disagrees with the commenter and interprets the regulation to permit service animals to occupy space within close proximity of the passenger. Moreover, DOT disagrees that there is an outright prohibition on service animals standing. Whether a service animal must sit depends on the size of the service animal and where it is located. DOT refers the commenter to Appendix VI titled ''DOT Guidance Concerning Service Animals in Air Transportation'' and the FAA Flight Standards Information Bulletin for Air Transportation titled ''Location and Placement of Service Animals on Aircraft Engaged in Public Air Transportation.'' FAA FSAT #04–01A.

4. Chapter 3: Assisting Air Travelers With Disabilities Planning a Trip

One disability organization requested that the word ''required'' rather than ''allowed'' be used by DOT when addressing situations where carriers may ask passengers for medical certificates (*i.e.*, when are medical certificates required rather than when are medical certificates allowed). Moreover, this disability organization suggested changing the example to indicate that a CRO ''should'' consult with medical personnel rather than stating that the CRO ''would likely'' consult with medical personnel to make the determination as to whether a medical certificate would be required of the passenger.

One carrier suggested adding information about battery types and requirements under 49 CFR 173.159(d) and other applicable FAA safety regulations when discussing mobility aids and assistive devices. Additionally, this carrier suggested adding language stating that a service animal is not permitted to occupy an empty passenger seat, that service animals should remain in their owners' immediate control, that service animals should not be permitted to eat or drink from a passenger's tray table, and that owners should carry a leash for their service animals.

DOT Response: DOT views the word ''allowed'' as appropriate when referring to situations where carriers may ask passengers for medical certificates since carriers are not required to ask passengers for medical certificates but are allowed to do so under certain circumstances (*e.g.*, passenger needs medical oxygen during the flight). In addition, in the example provided, DOT believes it would be appropriate to keep the wording as is and have the example in the TAM state that a CRO ''would likely'' consult with medical personnel to make the determination as to whether a medical certificate would be required of the passenger. By doing so, it allows carriers greater discretion and avoids a one-size-fits-all approach in determining when medical advice is necessary.

With regard to the request to add information about FAA safety regulations when discussing mobility aids in this chapter, DOT declines to do so because a detailed discussion on battery-powered wheelchairs has been provided in a subsequent chapter of the TAM. With respect to the comments about service animals, DOT refers the commenter to Appendix VI titled ''DOT Guidance Concerning Service Animals in Air Transportation'' published in May 2003.

5. Chapter 4: Assisting Air Travelers With Disabilities at the Airport

One carrier sought clarification as to whether a passenger who has already paid for the flight and volunteers to serve as an attendant receives a refund from the carrier for serving as the attendant. In addition, a disability organization suggested identifying the specific areas within the terminal (*e.g.*, ticket counters and baggage claims) that

are covered by the Standards for Accessible Design under the Americans with Disabilities Act (ADA) and those areas that are not, but are covered under Title III of the ADA (*e.g.*, shops and restaurants). With regard to making flight connections, this disability organization also suggested that passengers should be permitted to use their own wheelchairs or assistive devices when making connections as long as it would not delay the connecting flight. The concern seemed to be that ''automatic'' use of a ground wheelchair limits the independence of the passenger and the ability of the passenger to access a restroom in the terminal when making flight connections.

DOT Response: In situations where the carrier determines that it is necessary for a passenger with a disability to travel with an attendant, contrary to that passenger's self-assessment that he or she is capable of traveling independently, the carrier could find a carrier employee available to serve as an attendant or ask for volunteers among the passengers already ticketed. DOT interprets § 382.35(c) as requiring a carrier to provide a passenger (already ticketed for travel on the flight) who volunteers to serve as an attendant a refund for the price of his or her ticket so long as the volunteer is serving as an attendant for a person whom the airline determines must travel with an attendant despite that person's self-assessment.

As for the request that DOT list all of the areas within the terminal that are covered by the ADA, DOT declines to do so because such a list would be too limiting since all terminal facilities and services owned, leased, or operated by a carrier at a commercial service airport (including parking and ground transportation) must comply with the Standards for Accessible Design under the ADA. DOT has incorporated the suggestion that it include language in the TAM stating that with regard to making flight connections, passengers should be permitted to use their own wheelchairs or assistive devices to the extent practicable. Section 382.41(f) requires carriers to provide for the timely return of passengers' wheelchairs and other assistive devices as close as possible to the door of the aircraft so that passengers may use their own equipment to the extent practicable.

6. Chapter 5: Assisting Air Travelers With Disabilities Boarding, Deplaning, and During the Flight

One carrier asked whether individuals with prosthetic devices are qualified to occupy the aircraft emergency exit row seating. A disability organization appears to seek a revision to the law by asking about the feasibility of moveable armrests where tray tables and video entertainment systems are installed, suggesting a requirement that allows the bulkhead seats not used by a passenger accompanied by a service animal or a passenger with a fused or immobilized leg to be reserved for use by other passengers with disabilities, and recommending that the requirement that carriers train employees ''to proficiency'' be defined further to render it a meaningful standard.

DOT Response: With regard to the question as to whether individuals with prosthetic devices are qualified to occupy the aircraft emergency exit row seating, the FAA exit row seating requirements in 14 CFR 121.585 explain, among other things, that a carrier may not seat a person in an exit row seat if the person lacks sufficient mobility, strength, or dexterity in both arms and hands, and both legs to perform a number of tasks such as pushing, shoving, pulling or otherwise opening emergency exits. DOT would advise the commenter to review the FAA exit row seating requirements and ask for clarification if needed from the FAA about the type of individuals that may not qualify to occupy the aircraft emergency exit row seat. The FAA, as the entity within DOT that is responsible for issuing rules pertaining to aviation safety, has the authority to interpret 14 CFR 121.585. In instances where DOT's Enforcement Office receives a complaint of discrimination against a carrier for not allowing a passenger with a disability to sit on an exit row seat, the office generally reviews the FAA exit row seating requirements, confers with the FAA as needed, and makes a determination on a case-by-case basis as to whether the carrier violated the ACAA and Part 382 by denying a passenger with a disability the opportunity to sit in an exit row seat.

DOT has not adopted any of the comments seeking revisions to various sections of Part 382 as the TAM is a guidance document and is not the appropriate vehicle under which to change, expand, or reduce air carriers' legal obligations under Part 382.

7. Chapter 7: Interacting With People With Disabilities

Two disability organizations expressed concern about incidents in which ''meet and greet'' staff have left passengers with disabilities unattended, particularly deaf-blind passengers. The comments appear to seek further clarification of the connecting assistance requirement under Part 382.

DOT Response: DOT has added language in the TAM to explain that § 382.39(a)(3) states that carriers must not leave a passenger with a disability unattended in a ground wheelchair, boarding wheelchair, or other device in which the passenger is not independently mobile for more than 30 minutes. See Chapter 4, Section C. In addition, to encourage carriers to provide appropriate guidance to deaf-blind passengers, DOT has added language to Chapter 7 addressing this issue. Otherwise, presently, Part 382 contains no requirement that carriers not leave passengers with disabilities unattended when providing connecting assistance, including deaf-blind passengers. Accordingly, it would not be appropriate for DOT to expand Part 382 to require carriers not to leave deaf-blind passengers unattended through the TAM because the TAM is a guidance document and is not the appropriate vehicle under which to change, expand, or reduce air carriers' legal obligations under Part 382.

8. Appendix III: Frequently Asked Questions

Several disability organizations suggested additional topics for frequently asked questions. For example, one disability organization requested that a carrier's responsibility to passengers with disabilities traveling in a group be better defined. For example, it posed the scenario in which some passengers with disabilities traveling in a group are forced to travel on a different flight because the aircraft they were intending to fly on could not accommodate all of the assistive devices of the entire group.

DOT Response: DOT appreciates the suggestions for additional frequently asked questions and has considered each suggested question. Although DOT has increased the number of frequently asked questions in the TAM based on comments received, it believes that adding all of them would not assist in further clarifying the information in the TAM. With respect to the comment about the group of air travelers with disabilities traveling together, DOT refers the commenter to § 382.33(b)(7) which explains that a carrier may require up to 48 hours advance notice when a group of ten or more qualified individuals with disabilities make reservations and travel as a group to provide the carrier sufficient time to make the required accommodations. This requirement is also addressed in Chapter 3 of the TAM.

Issued this 7th day of April, 2005, in Washington, DC.

Samuel Podberesky,

Assistant General Counsel for Aviation Enforcement and Proceedings, U.S. Department of Transportation.

What Airline Employees, Airline Contractors, and Air Travelers With Disabilities Need To Know About Access to Air Travel for Persons With Disabilities

A Guide to the Air Carrier Access Act (ACAA) and Its Implementing Regulations, 14 CFR Part 382 (Part 382)

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Chapter 1: Understanding How To Use This Manual

A. Introduction
B. Background
C. Keyword Definitions

A. Introduction

Purpose of the Manual

This manual is a guide to the Air Carrier Access Act (ACAA) and its implementing regulations, 14 CFR part 382 (part 382). It is designed to serve as a brief but authoritative source of information about the services, facilities, and accommodations required by the ACAA and the provisions of part 382. The primary purpose of the manual is to help you, employees/contractors of air carriers and employees/contractors of indirect air carriers that provide services or facilities to passengers with disabilities, to assist those passengers in accordance with the law. Knowing your legal responsibilities will help ensure consistent compliance with the law and protect the civil rights of air travelers with disabilities when providing services, facilities, and accommodations to them.

Throughout the manual, rather than talking about air carriers' or indirect air carriers' employees/contractors such as yourself in the third person, the word ''you'' is used. In most instances, the word ''you'' refers to personnel who deal directly with the traveling public. Moreover, the obligations and responsibilities under the law as set forth in the manual must be read within the context of each specific employee's duties on the job.

A second purpose of this manual is to offer air travelers with disabilities information about their rights under the ACAA and the provisions of part 382. Accordingly, in addition to the other useful information in this manual, Appendix I contains a list of ''Tips for Air Travelers with Disabilities'' to help ensure a smooth and comfortable trip. In addition, Appendix III provides a list of ''Frequently Asked Questions'' and answers and Appendix IV contains a list of ''Recent DOT Enforcement Orders Related to the ACAA.'' These DOT enforcement orders are useful because they provide examples in which DOT has interpreted some of the provisions of the ACAA and part 382 under particular circumstances.

B. Background

U.S. Air Carriers

In 1986, Congress passed the ACAA, which prohibits discrimination by U.S. air carriers against qualified individuals with disabilities. 49 U.S.C. 41705. In 1990, the Department of Transportation (DOT) issued Part 382, the regulations defining the rights of passengers with disabilities and the obligations of U.S. air carriers under the ACAA. Since then, these regulations have been amended a number of times. DOT has also issued guidance to air carriers on the ACAA and Part 382 in a variety of ways: preambles to regulatory amendments, industry letters, correspondence with individual carriers or complainants, enforcement actions, website postings, and informal conversations with the public and air carriers.

Foreign Air Carriers

On April 5, 2000, the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (''AIR–21''; Pub. L. 106–181) amended the ACAA to cover foreign air carriers. Although a final rule modifying part 382 to cover foreign air carriers has not yet been issued, in May 2000 DOT's Office of the Assistant General Counsel for Aviation Enforcement and Proceedings (Enforcement Office) issued a notice informing the public of its intent to use the provisions of part 382 as guidance in investigating any complaints of non-compliance with the ACAA by foreign carriers. In addition, in July 2003 DOT amended part 382 by adding a new section 382.70, that requires both U.S. carriers and foreign carriers to record and report to DOT on written disability-related complaints that they receive. At the present time, section 382.70 is the only provision of Part 382 that specifically states that it applies to foreign carriers. Finally, a notice of proposed rulemaking (NPRM) proposing to extend the other provisions of Part 382 to foreign carriers was published on November 4, 2004. Therefore, while the majority of this manual does not expressly apply to foreign carriers, they should look to this document and Part 382 in satisfying their general nondiscrimination obligations under AIR–21 and DOT's May 2000 guidance.

Development of Technical Assistance Manual

In 2000, Congress required DOT to create a technical assistance manual to provide guidance to individuals and entities with rights or responsibilities under the ACAA. This manual responds to that mandate. In creating this manual, DOT held meetings with representatives

from the disability community, air carriers, and organizations that contract with air carriers to provide disability-related services. Those who attended the meetings made suggestions for this manual. All of these suggestions have been thoroughly considered by DOT and incorporated where appropriate.

ACCESS

A step-by-step process for resolving issues involving passengers with disabilities appears later in this manual. Whether the issue is a matter of law, customer service, or both, the ACCESS checklist will be useful in identifying the needs of passengers with disabilities and determining what accommodations the air carriers are required to provide as a matter of law. See chapter 6, section B.

How To Use This Manual

This manual is structured in the same sequence as the steps a passenger would encounter on a trip, *i.e.*, requirements concerning

- Planning a flight,
- The airport experience,
- Enplaning, deplaning, and making connections,
- Services during a flight, and
- Responding to disability-related complaints.

This manual contains the following tools to assist you in quickly and easily finding the answer to your questions:

- A Table of Contents at the beginning of the manual;
- An Alphabetical Index at the back of the manual; and
- A part 382 Index listing the citations to part 382 at the back of the manual.

Also, the following appendices appear at the end of the manual:

- Appendix I: ''Tips for Air Travelers with Disabilities'' as they relate to the most commonly-used accommodations, facilities, and services that carriers are required to make available to such passengers;
- Appendix II: A list of concerns applicable mainly to air carrier management, as opposed to frontline customer service personnel;
- Appendix III: A list of ''Frequently Asked Questions'' and answers;
- Appendix IV: A list of ''Recent DOT Enforcement Orders Related to the ACAA'';
- Appendix V: The full text of Part 382; and
- Appendix VI: The DOT document ''Guidance Concerning Service Animals in Air Transportation.''

Themes of This Manual

Legal Requirements and Customer Service

This manual highlights the difference between actions you must take according to the law as stated in part 382 and actions that you may choose to take in an effort to provide superior customer service to passengers with disabilities. Legal requirements are generally designated by the words, ''must'' or ''shall'' in the manual. Words such as ''should'' or ''may'' indicate accommodations that part 382 does not require but that DOT recommends and that you may decide to provide as a matter of good customer service.

Safety

Where applicable, this manual discusses how to properly and lawfully consider aircraft and passenger safety when providing transportation to passengers with disabilities. Part 382 does not require or authorize you to disregard FAA safety regulations. Where different treatment of passengers with disabilities or other restrictions are mandated by an FAA safety regulation, part 382 allows you to comply with the FAA safety regulation. For example, if an FAA safety rule provides that only persons who can perform certain functions can sit in an exit row, then you can request that an individual unable to perform those functions (regardless of whether that individual has a disability) sit in another row. If the passenger refuses, you can properly deny transportation to such passengers.

However, where an optional carrier action that is not required by FAA rules would result in different treatment of passengers with disabilities, or in other restrictions, then the ACAA and the provisions of part 382 prohibit you from implementing the optional carrier action even if it might ensure safety. For instance, suppose ABC Airways required only passengers with disabilities— not all passengers—to provide correct answers to a quiz about the content of a safety briefing and a passenger with a disability either refused to respond or failed such a quiz. It would not be appropriate to deny transportation to a passenger with a disability on such grounds unless the carrier's policies and procedures consistently treated all passengers in a similar manner.

In short, part 382 is consistent with FAA safety requirements as it allows you to follow FAA safety rules and to ensure that the safe completion of the flight or the health and safety of other passengers are not jeopardized. Determinations about whether an FAA rule requires different treatment of a passenger with a disability for safety reasons often depend on the circumstances you encounter. Therefore, it is important that you seek information from passengers with disabilities and their traveling companions and make a reasonable judgment considering all available information.

The FAA safety mandates can be found in the Code of Federal Regulations (14 CFR parts 60 through 139), FAA guidance interpreting these regulations, and Airworthiness Directives (*see http://www.faa.gov*, click on ''Aircraft Guidance'' and then click on ''Airworthiness Directives'').

Security

This manual addresses security procedures, particularly those enacted after the terrorist hijackings and tragic events of September 11, 2001, which affect or may affect the types of accommodations and services provided to passengers with disabilities. Similar to the situation involving FAA safety requirements, part 382 is consistent with security requirements mandated by the Transportation Security Administration (TSA). For example, TSA has strict rules as to which persons can go beyond the screener checkpoints, but these TSA rules are consistent with part 382 and do not invalidate your obligation to provide enplaning and deplaning assistance requested by passengers with disabilities, including assistance beyond screener checkpoints. You do have discretion in how that assistance is provided. You can provide (i) a ''pass'' allowing an individual who needs to assist a passenger with a disability to go through the screener checkpoint without a ticket; (ii) assistance directly to the passenger; or (iii) both.

Contractors

This manual recognizes the important role that contractors play in providing services, equipment, and other accommodations to passengers with disabilities. A contractor is an entity that has a business arrangement with an air carrier to perform functions that the ACAA and part 382 would otherwise require the air carrier to perform with its own employees. Contractors provide a variety of services on behalf of air carriers in furnishing assistance to persons with disabilities. For example, contractors often provide wheelchair service, assist passengers with disabilities on and off aircraft, transport passengers with disabilities between departure gates, and work as baggage handlers who handle passengers'

wheelchairs and other assistive devices. Contractors must provide the same services, equipment, and other accommodations required of an air carrier and its employees by the ACAA and part 382. As an employee of a contractor, you are therefore required to follow the mandates of the ACAA and part 382 when providing services, equipment, and other accommodations to passengers with disabilities. If you do not follow the mandates of the ACAA and part 382, the air carrier is subject to enforcement action by DOT for your failure.

C. Keyword Definitions

Following is a list of key words whose definitions will help you fully understand this manual.

Air Carrier: Any United States company that provides air transportation, either directly or indirectly or by a lease or any other arrangement. [Sec. 382.5]

Air Carrier Airport: A public, commercial service airport which enplanes annually 2,500 or more passengers and receives scheduled air service. [Sec. 382.5]

Air Transportation: Interstate, overseas, or foreign air transportation, or the transportation of mail by aircraft, as defined in the Federal Aviation Act (recodified as 49 U.S.C. 40101 *et seq.*). [Sec. 382.5]

Assistive Device: Any piece of equipment that assists a passenger with a disability in carrying out a major life activity. Assistive devices are those devices or equipment used to assist a passenger with a disability in caring for himself or herself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, working, or performing other functions of daily life. Assistive devices may include medical devices, medications, and bags or cases used to carry them.

Complaints Resolution Official (CRO): One or more individuals designated by each air carrier who must be thoroughly familiar with the requirements of part 382 and the air carrier's policies and procedures addressing part 382 and the provision of services, facilities, and accommodations to passengers with disabilities. A CRO must have the authority to resolve disability-related complaints on behalf of an air carrier. A CRO must be available to address disability-related complaints presented by passengers or other individuals. A CRO must be available [1] in person at the airport; or [2] via telephone or TTY at all times an air carrier is operating. [Sec. 382.65]

Contractor: A contactor is an entity that has a business arrangement with an air carrier to perform functions that the air carrier would otherwise be required to perform with its own employees under the ACAA and part 382. For example, carriers often have business arrangements with companies to provide wheelchair service to passengers with disabilities or to handle baggage. [Sec. 382.7]

Contractor Employee: An individual that works for an organization that has a business arrangement with one or more air carriers to provide services, facilities, and other accommodations to passengers with disabilities. [Sec. 382.7]

Department or DOT or U.S. Department of Transportation: The Federal agency that works to ensure a fast, safe, efficient, accessible, and convenient transportation system that meets the Nation's vital national interests and enhances the quality of life of the American people. DOT has nine operating administrations, in addition to the Office of the Secretary of Transportation (OST): Bureau of Transportation Statistics, Federal Aviation Administration (FAA), Federal Highways Administration, Federal Railroad Administration, Federal Transit Administration, Maritime Administration, National Highway Transportation Safety Administration, Research and Special Programs Administration, and the St. Lawrence Seaway Development Corporation. [Sec. 382.5] The responsibility for implementing the ACAA resides in OST.

DOT Disability Hotline or Hotline: The toll free telephone hotline system that provides general information about the rights of air travelers with disabilities, responds to requests for information, and assists air travelers with time-sensitive disability-related issues. Members of the public may call 1–800–778–4838 (voice) or 1–800–455–9880 (TTY) from 7 a.m. to 11 p.m. eastern time, seven days a week to receive assistance regarding air travel by individuals with disabilities.

FAA: The Federal administration that oversees the safety of our Nation's civil aviation system. Safety is the first and foremost mission of the FAA and includes the issuance and enforcement of regulations and standards related to the manufacture, operation, certification, and maintenance of aircraft. [Sec. 382.5]

Facility: All or any portion of aircraft, buildings, structures, equipment, roads, walks, parking lots, and any other real or personal property, normally used by passengers or prospective passengers visiting or using the airport, to the extent that the carrier exercises control over the selection, design, construction, or alteration of the property. [Sec. 382.5]

Indirect Air Carrier: A company not directly involved in the operation of an aircraft that sells air transportation services to the general public, such as tour and charter operators. [Sec. 382.5]

Individual With a Disability: Any individual who:

- Has a physical or mental impairment that, on a permanent or temporary basis,
- Substantially limits one or more major life activities,
- Has a record of such an impairment, or
- Is regarded as having such an impairment. [Sec. 382.5]

Qualified Individual With a Disability: An individual with a disability who:

- Accompanies or meets a traveler using airport facilities;
- Seeks information about schedules, fares, or policies;
- Attempts to use facilities or services offered to the general public by an air carrier;
- Has a ticket, or makes a good faith attempt to buy a valid ticket for a flight;
- Arrives with a valid ticket for the flight; and
- Meets reasonable, nondiscriminatory requirements applicable to all passengers. [Sec. 382.5]

Service Animal: Any animal that is individually trained or able to provide assistance to a qualified person with a disability or any animal shown by documentation to be necessary for the emotional well being of a passenger. With respect to emotional support animals, although carriers may require documentation to verify that an animal is an emotional support animal, such documentation is not required under the law.

Dogs, cats, and monkeys are among those that have been individually trained and act as service animals. Service animals may assist people with disabilities by, for example:

- Guiding persons with vision impairments;
- Alerting persons with deafness to specific sounds;
- Alerting persons with epilepsy of imminent seizure onset;
- Pulling a wheelchair;
- Assisting persons with mobility impairments with balance; and
- Providing emotional support for persons with disabilities. [Sec. 382.55]

Text Telephones (TTY) or Telecommunications Devices for the Deaf (TDD): TTYs, also called TDDs, are devices that allow individuals who are unable to use a regular telephone to make or receive telephone calls by enabling them to type their

conversations. The TTY benefits people who are deaf, hard of hearing, or speech impaired and individuals seeking to communicate with them. The conversation is typed back and forth and is displayed on a lighted display screen, a paper print-out in the TTY/TDD device, or a computer screen using specialized TTY software. A TTY may also be used to place a relay call to a party with a regular telephone. See Chapter 4, Section D.

Transportation Security Administration (TSA): An administration within the Department of Homeland Security that is charged with protecting the security of the Nation's transportation systems to ensure freedom of movement for people and commerce. The Aviation and Transportation Security Act, signed into law on November 19, 2001, brought airport security (including the responsibility to hire, train, manage, and discipline security screeners) under the direct authority of the TSA.

Chapter 2: Learning the Basics About the Law Protecting Air Travelers With Disabilities

• What does the Air Carrier Access Act (ACAA) say? The ACAA prohibits U.S. and foreign air carriers from discriminating against an air traveler with a disability on the basis of such disability (49 U.S.C. 41705).

• What is 14 CFR part 382 (part 382)? Part 382 is a detailed set of rules that define air carriers' responsibilities under the ACAA and ensures that individuals with disabilities will be treated without discrimination consistent with the safe carriage of all passengers.

• Who has to follow part 382? The following organizations and individuals must comply with part 382: (1) Air carriers and their employees (*e.g.,* ticket and gate agents, flight attendants, baggage handlers, pilots, etc.); (2) authorized agents of an air carrier (*e.g.,* travel agents); (3) organizations and their employees that have business arrangements with air carriers to provide disability-related services (*e.g.,* wheelchair service, baggage handling, etc.); and (4) indirect air carriers and their employees (*e.g.,* tour operators) that provide facilities, services, or other accommodations to passengers with disabilities.

• Who is protected by part 382? Part 382 protects three categories of individuals with disabilities: (1) Individuals who have a physical or mental impairment that, on a permanent or temporary basis, substantially limits one or more major life activities; (2) individuals who have a record of such impairment; and (3) individuals who are regarded as having such an impairment, whether they have the impairment or not.

• What is a physical or mental impairment? Physical impairments include (1) physiological disorders or conditions; (2) cosmetic disfigurements; or (3) anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory including speech organs, cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin, and endocrine.

Examples of physical impairments include orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, HIV disease, drug addition, and alcoholism.

Mental impairments include mental or psychological disorders, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

Physical characteristics such as the color of one's eyes, hair, or skin, baldness, and left-handedness do not constitute physical impairments. Similarly, neither age nor obesity alone constitutes a physical impairment. Disadvantages due to cultural or economic factors are not covered by part 382. Moreover, the definition of ''physical or mental impairment'' does not include personality traits such as poor judgment or a quick temper, where these are not symptoms of a mental or psychological disorder.

• What is a substantial limitation on major life activities? To qualify as a ''disability'' under part 382 a condition or disease must substantially limit a major life activity. Major life activities include, but are not limited to, activities such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

• When does an impairment ''substantially limit'' a major life activity? There is no absolute standard for determining when an impairment is a substantial limitation. Some impairments obviously limit the ability of an individual to engage in a major life activity.

Example 1: A person who is deaf is substantially limited in the major life activity of hearing.

Example 2: A person with traumatic brain injury may be substantially limited in the major life activities of: (a) Caring for himself or herself; and (b) working, because of memory deficiency, confusion, contextual difficulties, and the inability to reason appropriately.

Example 3: An individual who is paraplegic may be substantially limited in the major life activity of walking.

• Are temporary mental or physical impairments covered by part 382? Yes.

Example: While on a skiing trip, Jane breaks her leg and is placed in a cast that keeps her from bending her leg and walking without the use of crutches. Jane will eventually recover the full use of her leg, but in the meantime she is substantially limited in the major life activity of walking. Because Jane's broken leg will substantially limit a major life activity for a time, Jane would be considered to have a disability covered by part 382 during that time. You would be required to provide her certain services and equipment under part 382 if requested (*e.g.,* enplaning and deplaning assistance, connecting wheelchair assistance, seating with additional leg room in the same class of service to the extent required by part 382, safe stowage of her crutches in the aircraft cabin in close proximity to the passenger).

• Who is a person with a ''record of'' a disability under part 382? Part 382 protects individuals from discrimination who have a ''record of'' (history of) a physical or mental impairment that substantially limits a major life activity or who have been classified, or misclassified, as having such an impairment. Therefore, individuals who do not have an actual current impairment that substantially limits a major life activity would still be protected under part 382 based upon a past diagnosis (or a misdiagnosis) of an impairment that substantially limits a major life activity. Individuals with a history of cancer or epilepsy are examples of people with a record of impairment.

Example: Adam, a passenger who has had severe epileptic seizures in the past that rendered him unable to work, is denied transportation by airline personnel because of their concern that he may have a seizure on board the aircraft. This denial of transportation would be unlawful if based solely on the fact that Adam has had seizures in the past, because epilepsy may be controlled by medication. Airline personnel can lawfully deny transport to Adam only if they reasonably believe, based on the information available, that his seizure disorder poses a real safety risk to him or other passengers.

• When is a person ''regarded as'' having a disability? Part 382 also protects an individual who is ''regarded as'' having a physical or mental impairment that substantially limits a major life activity, whether or not that person actually has an impairment. People can be ''regarded as'' disabled if: (1) Their non-limiting or slightly limiting impairments are viewed by others as substantially limiting; (2) they have no impairments but are viewed by

others as having a substantially limiting impairment; or (3) their impairments become substantially limiting because of the attitudes of other people.

Example 1: John, an individual with a mild heart condition controlled by medication, is denied transportation because airline personnel believe that flying will cause John to have heart problems necessitating diversion of the aircraft during flight. John is not substantially limited in any major life activity by his condition. John has informed the air carrier personnel that his heart condition is controlled by medication and that for the past five years he has flown on a near weekly basis without incident. Even though John does not actually have an impairment that substantially limits a major life activity, he is protected by the provisions of part 382 because he is treated as though he does. The airline personnel's refusal to provide transportation to John must be reasonable under the facts and circumstances presented. Arguably, excluding John from the flight was unreasonable because John had informed the airline employee that he was taking medication and that he had flown frequently in the recent past without incident. The reasonableness of the decision depends on John's credibility and any additional information provided. Regardless of the reasonableness of the decision, the airline employee is legally required under section 382.31(e) to provide a written explanation to John within 10 calendar days setting forth the specific safety or other reason(s) for excluding John from the flight.

Example 2: Karen, an individual born with a prominent facial disfigurement, has been refused transportation on the grounds that her presence has upset several passengers who have complained to gate agents about her appearance. Karen's physical disfigurement becomes substantially limiting only as a result of the attitudes of others and she is protected by the provisions of part 382. Refusing to provide transportation to Karen would violate section 382.31 because you must not refuse to provide transportation to a qualified individual with a disability, such as Karen, solely because her appearance may offend or annoy other passengers. As in the example above, and regardless whether the decision to refuse transportation was correct, you must provide Karen with a written explanation of the specific basis for the refusal within 10 calendar days of the incident.

- How do I determine whether a person is an individual with a disability? Provide an opportunity for the passenger to self-identify by asking how you can best assist him or her.
- How do I assist a passenger with a disability? Ask the passenger how you can best assist him or her. A passenger with a disability has the most information about his or her abilities, limitations, level of familiarity with the airport and airline, and needs in connection with traveling by air.
- May I ask an individual what his or her disability is? Only to determine if a passenger is entitled to a particular seating accommodation pursuant to section 382.38. Generally, you may not make inquiries about an individual's disability or the nature or severity of the disability. However, you may ask questions about an individual's ability to perform specific air travel-related functions, such as enplaning, deplaning, walking through the airport, etc.

Example 1: You may not ask a person, ''What is your disability?'' You may not ask, ''Do you have diabetes?'

Example 2: You may ask, ''Can you walk from the gate area to your aircraft seat?'' You may ask, ''Are you able to transfer from the aisle chair over a fixed aisle seat armrest?'' You may ask, ''Can you walk from this gate to your connecting gate?'' You may ask (by writing a note if necessary), ''Do you need me to notify you if I make any announcements over the public address speaker?''

Example 3: Susan asks for a bulkhead seat because the condition of her leg necessitates her need for greater legroom. You may ask, ''Are you unable to bend your leg or is your leg fused or immobilized?'' [Sec. 382.38]

- What are some of the requirements of part 382 that you should be aware of? Following are some of the principal requirements of part 382. It is important to note that the requirements of part 382 listed below are not meant to be exhaustive. Rather, it is a list of requirements governing situations that you are likely to encounter on a regular basis.
- You must not discriminate against qualified individuals with a disability. [Sec. 382.7(a)(1)] You must not require a passenger with a disability to accept special services (including, but not limited to, pre-boarding) not requested by the passenger. [Sec. 382.7(a)(2)] Instead, you may ask a passenger with a disability if he or she would like a particular service, facility, or other accommodation. In addition, you must not exclude a qualified individual with a disability from or deny the individual the benefit of any air transportation or related services that are available to other passengers. [Sec. 382.7(a)(3)] For example, if you choose to provide ground transportation and overnight accommodations to passengers because of a flight cancellation, you must ensure that the ground transportation to the hotel, and the hotel itself, are accessible to a passenger with a disability.
- You must not refuse transportation to a passenger solely on the basis of a disability. [Sec. 382.31(a)]
- You must provide transportation to an individual with a disability who has an impairment that affects his or her appearance or results in involuntary behavior except under limited circumstances specified below. You must provide transportation to such individuals with disabilities even if the disability may offend, annoy, or inconvenience crewmembers or other passengers. [Sec. 382.31(b)] However, if the person's disability results in involuntary behavior that would or might be inimical to the safety of the flight, then the person may properly be refused transportation. [Sec. 382.31(d)]
- You shall not limit the number of individuals with disabilities on a particular flight. [Sec. 382.31(c)]
- If transportation of a passenger with a disability would endanger the safety of the aircraft or the health or safety of its passengers or violate an FAA safety regulation, you may refuse transportation to the individual with a disability. [Sec. 382.31(d)]
- You shall not require a passenger with a disability to travel with an attendant or to present a medical certificate, except in very limited circumstances. [Secs. 382.35(a) and 382.53(a)]
- You shall not exclude a passenger with a disability from any seat in an exit or other row solely on the basis of his or her disability except to comply with FAA safety rules. FAA safety rules establish criteria that must be met in order for a passenger to occupy a seat in the emergency exit rows. [14 CFR 121.585] If a passenger with a disability meets these FAA criteria, he or she must be allowed to sit in an emergency exit row. As with any other passenger, you must look at the individual passenger with a disability and reasonably assess whether he or she meets FAA criteria for exit-row seating. [Sec. 382.37(a)]
- You must provide timely enplaning, deplaning, and connecting assistance to passengers with disabilities requesting such assistance. As part of this duty, you must provide equipment (e.g., wheelchairs, electric carts, and aisle chairs) and personnel (e.g., individuals to propel wheelchairs and aisle chairs and individuals to assist passengers with disabilities in carrying and stowing their baggage). [Secs. 382.39(a)(1) and 382.39(b)(5)]
- You must allow a passenger with a disability to stow his or her cane or other assistive device inside the cabin of the aircraft close to his or her seat if it fits, consistent with FAA safety rules on carry-on items. [Sec. 382.41(c)]
- You must allow passengers to safely stow their wheelchairs or parts of wheelchairs (e.g., wheels, seats, etc.) in the overhead bin or under seats. [Sec. 382.41(e)(1)]
- You must ensure that there is space for at least one passenger with a disability to stow a folding wheelchair in the cabin of the aircraft if the aircraft has a designed seating capacity of 100

or more seats and the aircraft was ordered after April 5, 1990, or delivered after April 5, 1992. [Sec. 382.21(a)(2)]

• If there is a closet or other approved stowage area for passengers' carry-on items of sufficient size to accommodate a folding, collapsible, or break-down wheelchair, the carrier must designate priority stowage space for at least one wheelchair in that area. A passenger with a disability who takes advantage of the offer of the opportunity to pre-board may stow his or her wheelchair in this area with priority over other carry-on items brought onto the aircraft by other passengers and flight crew enplaning at the same airport. A passenger with a disability who does not pre-board may use this space to stow his or her wheelchair on a first-come, first-served basis along with other passengers stowing their carry-on items. [Sec. 382.41(e)(2)]

• You must have a copy of part 382 available at every airport you serve. Upon request by a passenger at the airport, you must make a copy available for review. [Sec. 382.45(d)]

• You must provide blind or visually-impaired passengers and passengers who are deaf, hard of hearing, or deaf-blind, timely access to the same information given to other passengers at the airport or on the airplane. This includes, but is not limited to, information concerning gate assignments, delayed flights, and safety. [Secs. 382.45(c) and 382.47]

• You must allow service animals to accompany passengers with disabilities in the cabin consistent with FAA safety requirements. You must allow the service animal to sit in close proximity to its user, as long as the service animal does not block the aisle or other emergency evacuation route in violation of FAA safety regulations. Often this will mean that the service animal will sit under the seat in front of the disabled passenger to avoid obstructing an aisle or other space. Some service animals are held by their users in their arms as an adult would hold a human infant (limited to infants under two years of age) of roughly the same size. [Sec. 382.55]

• You must make available a Complaints Resolution Official (CRO) at the airport—in person or by telephone or TTY—to address disability-related complaints that arise during the travel process at all times when your flights are operating at that airport. You must provide a CRO to a passenger even if the passenger does not use the term ''Complaints Resolution Official'' or ''CRO.'' When a passenger with a disability uses words such as ''supervisor,'' ''manager,'' ''boss,'' or ''disability expert'' in connection with resolving a disability-related issue, you must provide a CRO. [Sec. 382.65]

• You must not charge for services that are required by part 382. This means, for example, you must not ask for a tip when providing wheelchair service to a passenger. You may, however, impose a reasonable charge for services not required by part 382, i.e., optional services. Examples of such optional services include medical oxygen for use on board an aircraft or stretcher service. [Sec. 382.57]

• When am I required to provide disability-related accommodations to an individual? You are required to provide such an accommodation when: (1) An individual with a disability or someone acting on his or her behalf, such as a travel companion, family member, or friend, requests an accommodation required by part 382; or (2) you offer such a required accommodation to a passenger with a disability and he or she accepts such accommodation.

Chapter 3: Assisting Air Travelers With Disabilities Planning a Trip

A. Advance Notice
B. Information About the Aircraft
C. Mobility Aids and Assistive Devices
D. Service Animals
E. Accommodations for Air Travelers Who Are Deaf, Hard of Hearing, or Deaf-Blind
F. Communicable Diseases
G. Medical Certificates: When Are They Allowed?
H. Your Obligation To Provide Services and Equipment
I. Attendants

A. Advance Notice

You cannot require passengers with disabilities to provide advance notice of their intention to travel or of their disability except as provided below. [Sec. 382.33(a)]

Advance Notice Only for Particular Services and Equipment

You may require up to 48 hours' advance notice and one hour's advance check-in from a passenger with a disability who wishes to receive the following services:

• Transportation for a battery-powered wheelchair on an aircraft with fewer than 60 seats;

• Provision by the carrier of hazardous materials packaging for the battery of a wheelchair or other assistive device;

• Accommodations for 10 or more passengers with disabilities who travel as a group; and

• Provision of an on-board wheelchair on an aircraft that does not have an accessible lavatory for passengers with disabilities who can use an inaccessible lavatory but need an on-board chair to do so. [Secs. 382.33(b)(5)–(8)]

Example: While making his reservation, a passenger with a disability gave the reservation agent 48 hours' advance notice that he would need an aisle chair to access the lavatory on his upcoming flight. The flight is on an aircraft with more than 60 seats and it does not have an accessible lavatory. During the call, the passenger is made aware of the fact that the lavatory is inaccessible, but explains that he can use an inaccessible lavatory as long as he has access to a carrier-provided aisle chair. Because the passenger has complied with the advance notice requirement here, normally this information would have been entered into the passenger's reservation record (otherwise known as the passenger name record (PNR)) by the carrier and the request for an aisle chair would have been handled through that notification process. You are a new gate agent for your carrier and when this passenger approaches you at the gate more than an hour before the scheduled departure time of the flight and asks about the aisle chair, you are not sure how to reply. What should you do?

To begin, as a matter of good customer service, you should tell the passenger that you are not sure but you will find out for him. You should ask a colleague and, if necessary, contact a CRO. When you ask your colleague, you are told that all aircraft with more than 60 seats in your carrier's fleet maintain an in-cabin aisle chair. Once you receive this information you should assure the passenger that an aisle chair is available so he can use the inaccessible lavatory on the aircraft.

Advance Notice for Optional Services and Equipment

Although carriers are not required to provide the following services or equipment, if they choose to provide them, you may require 48 hours' advance notice and one hour's advance check-in for:

• Medical oxygen for use on board the aircraft;

• Carriage of an incubator;

• Hook-up for a respirator to the aircraft's electrical power supply; and

• Accommodation for a passenger who must travel on a stretcher. [Secs. 382.33(b)(1)–(4)]

If appropriate advance notice has been given and the requested service is available on that particular flight, you must ensure that the service or equipment is provided.

Make a Reasonable Effort To Accommodate, Even Without Advance Notice

In addition, even if a passenger with a disability does not meet the advance notice or check-in requirement, you must make a reasonable effort to furnish

the requested service or equipment, provided that making such accommodation would not delay the flight. [Secs. 382.33(c) and (e)]

Example 1: Mr. Thomas uses a battery-powered wheelchair. He travels frequently between Washington, DC, and New York for business. One day, he finds out that he has an important business meeting in New York and must travel up to New York that afternoon. He has no time to provide advance notice regarding the transportation of his battery-powered wheelchair and arrives at the gate 45 minutes before his flight is scheduled to depart. The aircraft for the flight has fewer than 60 passenger seats. What should you do?

Carriers may require 48 hours' advance notice and one-hour advance check-in for transportation of a battery-powered wheelchair on a flight scheduled to be made on an aircraft with fewer than 60 seats. Carriers may require the same advance notice for provision of hazardous materials packaging for a battery. However, airline personnel are required to make reasonable efforts to accommodate a passenger who fails to provide the requisite notice to the extent it would not delay the flight. Therefore, you must make a reasonable effort to accommodate Mr. Thomas as long as it would not delay the flight.

Mr. Thomas is a frequent traveler on this particular route and he knows that usually it is feasible to load, store, secure, and unload his battery-powered wheelchair and spillable battery in an upright position [Sec. 382.41(g)(2)] or detach, ''box'', and store the spillable battery [Sec. 382.41(g)(3)] within about 20–25 minutes. If this is the case, you must accommodate Mr. Thomas, his battery-powered wheelchair, and the spillable battery even though Mr. Thomas did not provide advance notice, since doing so would not delay the flight.

Example 2: Ms. Webster must travel with medical oxygen and shows up at the airport without providing advance notice of her need for medical oxygen. As a policy, your carrier does not provide medical oxygen on any flights. What should you do?

To begin, you should confirm that your carrier does not provide the optional service of medical oxygen for use on board a flight. If no medical oxygen service is available on your carrier, you should explain this to Ms. Webster and tell her that the carrier cannot accommodate her.

As a matter of customer service, you may direct Ms. Webster to another carrier that does provide medical oxygen service in that market. The passenger should be aware, however, that the provision of medical oxygen involves coordination with the passenger's physician to determine the flow rate and the amount of oxygen needed and arranging for the delivery of the oxygen by the carrier to the point of origin of the passenger's trip. Therefore, normally, it is not possible to accommodate a passenger who needs medical oxygen on a flight unless the advance notice is provided because the accommodation cannot be made without delaying the flight.

If Aircraft Is Substituted, Make an Effort To Accommodate

Even if a passenger with a disability provides advance notice, sometimes weather or mechanical problems require cancellation of the flight altogether or the substitution of another aircraft. Under these circumstances, you must, to the maximum extent feasible, assist in providing the accommodation originally requested by the passenger with a disability. [Sec. 382.33(f)]

B. Information About the Aircraft

You should be familiar with and be able to provide information about aircraft accessibility for passengers with a disability when they request this information. [Secs. 382.21 and 382.45] When feasible, you should provide information pertaining to a specific aircraft to be used for a specific flight. In general, you must take into account safety and feasibility when seating passengers with disabilities. [Secs. 382.37(a) and 382.38(j)]

If requested, you should be able to provide information on the following:

- Any limitations concerning the ability of the aircraft to accommodate an individual with a disability;
- The location of seats, if any, in a row with a movable aisle armrest and any seats which the carrier does not make available to individuals with a disability (e.g., exit rows);
- Any limitation on the availability of storage facilities in the cabin or in the cargo bay for mobility aids or other equipment commonly used by an individual with a disability; and
- Whether the aircraft has a lavatory accessible to passengers with a disability.

C. Mobility Aids and Assistive Devices

If, in assisting a passenger with a disability, a carrier employee or contractor takes apart the passenger's mobility aid or assistive device (e.g., a wheelchair), another carrier employee or contractor must reassemble it and ensure its prompt return to the passenger with a disability in the same condition in which the carrier received it. [Secs. 382.43(a) and (b)] You must permit passengers with a disability to provide written instructions concerning the disassembly and reassembly of their wheelchairs. [Sec. 382.41(h)] You cannot require passengers with disabilities to sign a waiver of liability for damage to or loss of wheelchairs or other assistive devices. [Sec. 382.43(c)] However, you may note preexisting damage to wheelchairs or other assistive devices.

D. Service Animals [1]

A service animal is (i) an animal individually trained and which performs functions to assist a person with a disability; (ii) an animal that has been shown to have the innate ability to assist a person with a disability, e.g., a seizure alert animal; or (iii) an emotional support animal. You should be aware that there are many different types of service animals that perform a range of tasks for individuals with a disability.

Service Animal Permitted To Accompany Passenger on Flight and at Seat Assignment

You must permit dogs and other service animals used by passengers with a disability to accompany the passengers on their flights. In addition, you must permit a dog or other service animal to accompany a passenger with a disability to the passenger's assigned seat and remain there as long as the animal does not obstruct the aisle or other areas that must remain unobstructed for safety reasons. [Sec. 382.55(a)] The service animal must be allowed to accompany the passenger unless it poses a direct threat to the health or safety of others or presents a significant threat of disruption to the airline service in the cabin. See also Appendix VI, DOT Guidance Concerning Service Animals in Air Transportation; FAA Flight Standards Information Bulletin for Air Transportation (FSAT) #04–01A, ''Location and Placement of Service Animals on Aircraft Engaged in Public Air Transportation'' *http://www.faa.gov/avr/afs/fsat/fsatl.htm.*

If Service Animal Cannot Be Accommodated at Assigned Seat

If a service animal cannot be accommodated at the seat of the passenger with a disability and if there is another seat where the passenger and the animal can be accommodated, you must offer the passenger the opportunity to move to the other seat with the service animal. Switching seats must be explored as an alternative before requiring that the service animal travel in the cargo compartment. [Sec. 382.37(c)]

Verification of Service Animals

Under particular circumstances, you may see a need to verify whether an animal accompanying a passenger with a disability qualifies as a service animal under the law. You must accept the following as evidence that the animal is indeed a service animal:

[1] See also Appendix VI.

• The credible verbal assurances of a passenger with a disability using the animal,
• The presence of harnesses or markings on harnesses,
• Tags, or
• Identification cards or other written documentation. [Sec. 382.55(a)(1)]

Keep in mind that passengers accompanied by service animals may not have identification or written documentation regarding their service animals. See also Appendix VI, DOT Guidance Concerning Service Animals in Air Transportation.

Carriers may require that passengers traveling with emotional support animals present current documentation (i.e., dated within a year of the date of travel) from a mental-health professional stating that:
• The passenger has a mental health-related disability;
• The passenger needs the animal for the mental-health condition; and
• The provider of the letter is a licensed mental-health professional (or a medical doctor) and the passenger is under the individual's professional care.

Even if you receive sufficient verification that an animal accompanying a passenger is indeed a service animal, if the service animal's behavior in a public setting is inappropriate or disruptive to other passengers or carrier personnel, you may refuse to permit the animal on the flight and offer the passenger alternative accommodations in accordance with part 382 and your carrier's policy (e.g., accept the animal for carriage in the cargo hold).

Example 1: A passenger arrives at the gate accompanied by a pot-bellied pig. She claims that the pot-bellied pig is her service animal. What should you do?

While generally speaking, you must permit a passenger with a disability to be accompanied by a service animal, if you have a reasonable basis for questioning whether the animal is a service animal, you may ask for some verification. Usually no written verification is required though.

You may begin by asking questions about the service animal, e.g., ''What tasks or functions does your animal perform for you?'' or ''What has its training been?'' If you are not satisfied with the credibility of the answers to these questions or if the service animal is an emotional support animal, you may request further verification.

You should also call a CRO if there is any further doubt in your mind as to whether the pot-bellied pig is the passenger's service animal.

Finally, if you determine that the pot-bellied pig is a service animal, you must permit the service animal to accompany the passenger to her seat as long as the animal doesn't obstruct the aisle or present any safety issues and the animal is behaving appropriately in a public setting.

Example 2: A deaf passenger is planning to board the plane with his service animal. The service animal is a hearing dog and is small enough to sit on the deaf passenger's lap. While waiting to board the flight, the hearing dog jumps off the passenger's lap and begins barking and nipping at other passengers in the waiting area. What should you do?

Since you have already made the determination that the hearing dog is a service animal and may accompany the deaf passenger on the flight, you may reconsider the decision if the dog is behaving in a manner that seems disruptive and infringes on the safety of other passengers. You should carefully observe the hearing dog's behavior and explain it in detail to a CRO (if the CRO is on the telephone). If, after careful consideration of all the facts presented, the CRO decides not to treat the dog as a service animal, you should explain your carrier's policy regarding traveling with animals that are not being allowed in the passenger cabin as service animals.

Requests for Seat Assignments by a Passenger Accompanied by a Service Animal

For a disabled passenger traveling with a service animal, you must provide, as the passenger with a disability request, either a bulkhead seat or a seat other than a bulkhead seat. [Sec. 382.38(a)(3)]

If carriers provide special information concerning the transportation of animals outside the continental United States to any passengers, you must provide such information to all passengers with a disability traveling with a service animal on the flights. [Sec. 382.55(a)(3)]

E. Accommodations for Air Travelers Who Are Deaf, Hard of Hearing, or Deaf-Blind

If your carrier makes available a telephone reservation and information service to the public, you must make available a text telephone (TTY) to permit individuals who are deaf or hard of hearing to make reservations and obtain information. The TTY must be available during the same hours as the telephone service for the general public and the same wait time and surcharges must apply to the TTY as the telephone service for the general public. [Secs. 382.47(a) and (b)]

F. Communicable Diseases

Passengers With a Communicable Disease Are Permitted on Flight

Except as described below, you must not (i) refuse transportation to; (ii) require provision of a medical certificate from; or (iii) impose any condition, restriction, or requirement not imposed on other passengers on, a passenger with a communicable disease or infection. [Sec. 382.51(a)]

If Direct Threat to Health or Safety of Others, Limitations May Be Imposed

Only if a passenger with a communicable disease or infection poses a direct threat to the health or safety of others, can you take any of the actions listed above. [Sec. 382.51(b)(1)] A direct threat means a significant risk to the health or safety of others that cannot be eliminated by a modification of policies, practices, or procedures, or by the provision of auxiliary aids or services.

If you are faced with particular circumstances where you are required to make a determination as to whether a passenger with a communicable disease or infection poses a direct threat to the health or safety of others, you must make an individualized assessment based on a reasonable judgment, relying on current medical knowledge or the best available objective evidence. If the presentation of a medical certificate would alleviate concerns over the passenger's condition, or reasonable modification of policies, practices, or procedures would lessen the risk to other passengers, then you should consider this in making such an individualized assessment. You should also confer with appropriate medical personnel and a CRO when making this assessment.

If the Passenger Poses a Direct Threat to the Health and Safety of Others

If, in your estimation, a passenger with a communicable disease or infection poses a direct threat to the health or safety of other passengers, you may (i) refuse to provide transportation to that person; (ii) require that person to provide a medical certificate stating that the disease at its current stage would not be transmittable during the normal course of a flight or, if applicable, describing measures that would prevent transmission during the flight [Sec. 382.53(c)]; or (iii) impose on that passenger a special condition or restriction (*e.g.*, wearing a mask). You must choose the least restrictive of the three options set forth above that would accomplish the objective. [Sec. 382.51(b)(4)]

At all times, as a matter of good customer service, you should treat the passenger with courtesy and respect.

G. Medical Certificates: When Are They Allowed?

A medical certificate is a written statement from the passenger's physician saying that the passenger is capable of completing the flight safely without requiring extraordinary medical assistance during the flight. Except

under the circumstances described below, you must not require medical certification of a passenger with a disability as a condition for providing transportation.

You may require a medical certificate only if the passenger with a disability is an individual who:

- Is traveling on a stretcher or in an incubator (where such service is offered);
- Needs medical oxygen during the flight (where such service is offered); or
- Has a medical condition that causes the carrier to have reasonable doubt that the passenger can complete the flight safely without requiring extraordinary medical assistance during the flight. [Sec. 382.53 (a) and (b)]

Medical Certificate and a Passenger With a Communicable Disease or Infection

In addition, if you determine that a passenger with a communicable disease or infection poses a direct threat to the health or safety risk of others, you may require a medical certificate from the passenger. [Sec. 382.53(c)(1)] The medical certificate must be dated within 10 days of the flight date. [Sec. 382.53(c)(2)]

In the event that you determine the need for a medical certificate, you should indicate to the passenger with a disability the reason for the request. You should base your request on the reasons set forth under the law and outlined above.

At all times, you should treat the passenger from whom you are requesting a medical certificate with courtesy and respect.

Example: A passenger arrives at the gate with her six year old daughter. The girl's face and arms are covered with red lesions, resembling chicken pox. What should you do?

Generally, you must not refuse travel to, require a medical certificate from, or impose special conditions on a passenger with a communicable disease or infection. However, if a passenger appears to have a communicable disease or infection that poses a direct threat to the health or safety of other passengers, you may be required to make a determination about the best course of action.

The first thing you should do is interview the passenger and her mother to obtain basic information about the girl's condition. This exchange should be done discreetly and in a courteous and respectful manner. If you still have a question about the nature of the child's condition that will impact decisions about transportation, you should contact a CRO and explain the situation.

Here, the mother tells you and the CRO that the child has chicken pox but is no longer contagious. The CRO would likely consult with appropriate medical personnel to verify whether the child could be contagious based on the mother's statement.

If there is a reasonable basis for believing that the passenger poses a direct threat to the health or safety of others, you must choose the least restrictive alternative among the following options: (i) Refusing transportation to the individual; (ii) requiring a medical certificate; or (iii) imposing a special condition or limitation on the individual. If the medical support people indicate that there is a chance that the child is no longer contagious but only if a certain number of days have passed since the outbreak of the lesions, you could request a medical certificate before you permit the child to travel.

Having discussed the situation with the passenger and her mother and consulted the CRO and the medical support personnel, the request for a medical certificate appears to be reasonable under the circumstances and the least restrictive of the three options.

Keep in mind that Section 382.53(c)(2) specifies that the medical certificate be from the child's physician and state that the child's chicken pox would not be communicable to other passengers on the flight. The medical certificate must also include any conditions or precautions that would have to be observed to prevent the transmission of the chicken pox to other passengers and be dated within ten days of the date of the flight. If the medical certificate is incomplete or if the passenger is attempting to travel before the date specified in the medical certificate or without implementing the conditions outlined to prevent transmission, the child would not be permitted to fly.

H. Your Obligation To Provide Services and Equipment

When assistance getting on or off a plane, making flight connections, or receiving transportation between gates is requested by a passenger with a disability, or offered by carrier personnel and accepted by the passenger, you must provide it. [Sec. 382.39(a)] More specifically, you must provide, as needed, the following:

- Services personnel
- Ground wheelchairs
- Boarding wheelchairs
- Ramps or mechanical lifts. [Sec. 382.39(a)(1)]

Aircraft with more than 60 passenger seats having an accessible lavatory must be equipped with an operable on-board wheelchair. [Sec. 382.21(a)(4)] On-board wheelchairs must be equipped with footrests, armrests which are movable or removable, adequate occupant restraint systems, a backrest height that permits assistance to passengers in transferring, structurally sound handles for maneuvering the occupied chair, and wheel locks or another adequate means to prevent chair movement during transfer or turbulence. The on-board wheelchair must be designed to be compatible with the maneuvering space, aisle width, and seat height of the aircraft on which it is to be used, and to easily be pushed, pulled, and turned in the cabin environment. [Sec. 382.21(a)(4)(iii)]

You must permit a passenger with a disability to provide written instructions and should accept oral advice from the passenger concerning the disassembly and reassembly of the passenger's wheelchair. [Sec. 382.41(h)] In addition, you should be familiar with how (i) a passenger accesses and uses a particular service or piece of equipment; (ii) the passenger's needs are being met by the service or piece of equipment; and (iii) that service should be provided or how that equipment operates, is disassembled, stored properly, and reassembled. Finally, consistent with good customer service, you should treat the passenger with a disability with courtesy and respect at all times by keeping the passenger informed about any problems or delays in providing personnel or equipment in connection with an accommodation.

Example: A passenger using a battery-powered wheelchair arrives at the gate and requests that the footrests and joy stick be removed and stowed. He expresses concern because after his last flight, the airline personnel initially misplaced one of the components of the wheelchair when they disassembled it and stored it during the flight. What should you do?

Presuming the aircraft is the type that can accommodate the storage of a battery-powered wheelchair, you are required to stow his wheelchair properly on board and you may, if needed, provide an aisle chair. As a preliminary matter, you should receive training from your carrier on the use of equipment and services for passengers with a disability, including battery-powered wheelchairs. In addition to the formal training, it is worthwhile to review with the passenger how best to meet his needs. For example, you should ask the passenger to review the procedure for disassembling the wheelchair, storing parts during the flight, and reassembling the wheelchair. Once you are clear about the process, you should communicate with the appropriate employees to ensure that they understand the passenger's needs with respect to his battery-powered wheelchair. Your carrier should have a policy and process for ensuring that the battery-powered wheelchair is returned to the passenger at his destination in the same condition in which it was received by the carrier. Problems concerning the reassembly of expensive battery-powered wheelchairs can be minimized by following Section 382.41(g)(2), which governs the proper storage of such wheelchairs. See also Chapter 5, Section D.

I. Attendants

Except under limited circumstances, you cannot require a person with a disability to be accompanied by an attendant. [Sec. 382.35(a)] See chapter 4, Section E for a discussion of the

requirements for an attendant under the law.

Chapter 4: Assisting Air Travelers With Disabilities at the Airport

A. Accessibility of Terminal Facilities and Services
B. Security Screening for Air Travelers With a Disability
C. Air Travelers With a Disability Changing Planes
D. Accommodations for Air Travelers Who Are Deaf, Hard of Hearing, or Deaf-Blind
E. Attendants

A. Accessibility of Terminal Facilities and Services

All terminal facilities and services owned, leased, or operated by a carrier at a commercial service airport, including parking and ground transportation, must comply with the Standards for Accessible Design under the Americans with Disabilities Act. [Sec. 382.23(e)] These terminal facilities and services must be accessible to and usable by individuals with disabilities, including individuals who use wheelchairs. [Sec. 382.23(b)] For example, terminals must provide accessible inter-terminal transportation systems, *e.g.*, shuttle vehicles and people movers. [Sec. 382.23(d)]

As appropriate to your specific responsibilities and duties when dealing with the traveling public and consistent with all carriers' obligation to ensure training to proficiency [Sec. 382.61(a)], you should understand how these services and facilities function as well as their uses by passengers with a disability. You should also know where they are located within or without the terminal.

Carriers must also ensure that there is an accessible path between the gate and the area from which aircraft are boarded. [Sec. 382.23(c)]

Carriers shall not (i) restrict the movements of individuals with disabilities in terminals; (ii) require them to remain in a holding area or other location in order to receive assistance; or (iii) mandate separate treatment for individuals with disabilities except as required or permitted under part 382. [Sec. 382.55(c)]

B. Security Screening for Air Travelers With a Disability [1]

Security Screening for Passenger With a Disability Same as for Other Passengers

You must undertake a security screening of a passenger with a disability in the same manner as any other passenger. You must not subject a passenger with a disability who possesses an aid used for independent travel to a special screening procedure if the passenger and the aid or assistive device clear security without activating the security system. [Sec. 382.49(a)]

Screening Mobility Aid or Assistive Device

The statement of the law set forth above would not, however, prohibit you from examining a mobility aid or assistive device if, in your judgment, it may conceal a weapon or other prohibited item even if the mobility aid or assistive device does not activate the security system.

In the event a passenger's mobility aid or assistive device activates the security system, you must conduct the security search of the passenger with a disability in the same manner as you would for other passengers who activate the system.

If Passenger With a Disability Requests Private Screening

You must not require a private security screening for a passenger with a disability for any reason different from the reasons other passengers would be subject to a private security screening. However, if a passenger with a disability requests a private security screening in a timely manner, you must provide it in time for the passenger to board the flight. [Sec. 382. 49(b)] If, however, you are able to conduct a security screening of a passenger with a disability without the need for a physical search of the person, you are not required to provide a private screening. [Sec. 382.49(c)]

Finally, under certain circumstances, safety considerations may require you to exercise discretion in making the above decisions. You must always seek assistance from the appropriate designated personnel in making such a decision.

C. Air Travelers With a Disability Changing Planes

As an employee of the delivering carrier, on request, you must provide assistance to a passenger with a disability in making flight connections and providing transportation between gates. [Sec. 382.39(a)] This is the case regardless whether the delivering carrier has an interline agreement with the other carrier. Where needed and to the extent required by law, you must provide services personnel, wheelchairs, and ramps or mechanical lifts. [Sec. 382.39(a)(1)]

Note: Carriers must not leave a passenger with a disability unattended in a ground wheelchair or other device in which the passenger is not independently mobile for more than 30 minutes. [Sec. 382.39(a)(3)]

Example: A passenger who developed a progressive onset of weakness in his legs during his flight requests a wheelchair when he deplanes to assist him in making it over to the gate of his connecting flight. What should you do?

Because the delivering carrier has an obligation to provide transportation to a passenger with a disability to the gate of his connecting flight, you must provide timely, accessible ground transportation so he makes it to his connecting flight. In addition, you should keep in mind that once the wheelchair service is provided, you cannot leave the passenger unattended for more than 30 minutes if he is not independently mobile. As a matter of good customer service, you should treat the passenger with courtesy and respect throughout this process.

D. Accommodations for Air Travelers Who Are Deaf, Hard of Hearing, or Deaf-Blind

Carriers are responsible for ensuring that passengers with disabilities, including those with vision or hearing impairments, receive the same information in a timely manner that the carrier provides to other passengers in the terminal or on the aircraft, including but not limited to, information about ticketing, flight delays, schedule changes, connections, flight check-in, gate assignments and the checking and claiming of luggage. [Sec. 382.45(c)] Passengers with disabilities who are unable to obtain such information from the audio or visual system used by carriers in airports or on aircraft must request such information to be provided in an accessible manner.

TTY

You must make available a TTY to permit individuals who are deaf or hard of hearing to obtain information from carriers. See also chapter 3, section E. The TTY must be available during the same hours as the telephone service for the general public and the same wait time and surcharges must apply to the TTY as the telephone service for the general public. [Secs. 382.47(a) and (b)] The TTY must also be available if the passenger who is deaf or hard of hearing wishes to contact a CRO. [Sec. 382.65(a)(2)] In addition, you should inform the individual about the DOT Hotline that is accessible by a TTY. You should be familiar with the use of the

[1] In the wake of the events of September 11, 2001, in most cases, TSA has taken over for carriers in the area of providing security screenings of passengers. Should carriers resume this responsibility or in cases where carriers still retain some involvement in the security screening process, this section would be applicable to carriers and contractors of carriers performing this function.

TTY and its location(s) within the terminal.

In addition, you should be aware of the option of using a relay operator to connect one party who is using a TTY and one party who is using a voice-operated telephone. By dialing 711 on any telephone (TTY or voice operated) you can contact a relay operator who serves as a ''go between'' between a person using a TTY and a person using a voice-operated telephone.

Example: A passenger who is deaf complains to you about another employee whom she believes has been rude and humiliated her when she asked for an alternate means of communication because she was unable to hear what was being said to passengers waiting to board the flight. What should you do?

As a matter of good customer service, you should apologize to the passenger for any insensitive behavior on the part of carrier personnel. In general, you should carefully observe and gauge the manner in which this passenger who is deaf communicates. When communicating, try to use the same method, e.g., speaking slowly, communicating in writing or with the assistance of an aid or device, etc. Try to find out what happened and what information she missed by communicating in an accessible manner.

You may also consult with a CRO to see about sign language or other assistive services that might be available for this passenger. If the CRO is made available by telephone and the passenger requests, TTY service must be available for the passenger to communicate directly with the CRO. You should also notify the appropriate flight crew regarding ensuring that the transmittal of information onboard is accessible to this passenger.

E. Attendants

You should know that it is generally not appropriate to require a passenger with a disability to be accompanied by a personal care attendant. [Sec. 382.35(a)] Even if you have concerns about a passenger's ability to access the lavatory or the passenger's need for extensive special assistance which airline personnel are not obligated to provide, e.g., assistance in eating, assistance within the lavatory, or provision of medical services [Sec. 382.39(c)], you must not require the passenger with a disability to travel with a personal care attendant except in the circumstances described below.

Safety Considerations May Necessitate an Attendant

In the interests of safety, however, you may require that a passenger with a disability travel with an attendant as a condition of receiving air transportation if the passenger is:

- Traveling on a stretcher or in an incubator (where such service is offered);
- Mentally disabled and unable to comprehend or respond appropriately to safety instructions;
- Severely impaired with respect to mobility and would be unable to assist in the passenger's own evacuation from the aircraft; or
- Deaf and severely impaired with respect to vision such that the passenger could not adequately communicate with airline employees to permit transmission of the safety briefing. [Secs. 382.35(b)(1)–(4)]

If Carrier Contends That Attendant Is Required for Safety Reasons and Passenger Disagrees

If, after careful consultation with a CRO and any other personnel required to be consulted by the carrier, you determine that a passenger with a disability must travel with an attendant for one of the reasons described in Section 382.35(b) (see above), then the carrier may require that the passenger be accompanied by an attendant. If your decision is contrary to the self-assessment of the passenger with a disability, then the carrier must not charge for the transportation of the attendant. [Sec. 382.35(c)] In addition, if no seat is available on the flight for the attendant whom the carrier has determined to be necessary and as a result the passenger with a disability with a confirmed reservation is unable to travel on the flight, the passenger with a disability is eligible for denied boarding compensation. [Sec. 382.35(d)] For purposes of determining whether a seat is available for an attendant, the attendant must be deemed to have checked in at the same time as the passenger with a disability. [Sec. 382.35(e)]

In the event you choose to recruit an attendant to accompany the passenger with a disability, even though carriers are not obligated to do so, you may ask (i) an off-duty airline employee traveling on the same flight to function as the attendant; (ii) a volunteer from among the other customers traveling on the flight and offer a free ticket for their assistance; or (iii) the passenger with a disability to choose an attendant and offer a free ticket.

If the attendant is accompanying a passenger traveling on a stretcher or in an incubator, the attendant must be capable of attending to the passenger's in-flight medical needs. [Sec. 382.35(b)(1)] Otherwise, the purpose of the attendant is to assist the passenger with a disability in an emergency evacuation. Other than the situation set forth above when an attendant is accompanying a passenger who is on a stretcher or in an incubator, the attendant is not obligated to provide personal services to the passenger with a disability such as assistance with eating or accessing the lavatory.

Example: A passenger with quadriplegia traveling alone approaches the check-in counter. You have concerns as to whether the passenger's mobility impairment is so severe that he would be unable to assist in his own evacuation from the aircraft. What should you do?

You should begin by communicating with the passenger to determine the extent of his mobility impairment. As a matter of good customer service, you should treat the passenger with courtesy and respect at all times. Under the circumstances, you should contact a CRO to discuss the situation and determine whether the passenger must be accompanied by an attendant. You and the CRO could begin by asking the passenger about his mobility impairment and whether he would be able to assist with his own evacuation in the event of an emergency. More specifically, you should determine whether the passenger has the functional ability to make any progress toward an exit during an evacuation. If the passenger tells you that his ability to assist in his evacuation is limited to shouting ''Help!'', you and the CRO should explain to him that the issue is whether he can physically assist in his own evacuation. If not, he must travel with an attendant.

If, after speaking with the passenger, you and the CRO determine that he must be accompanied by an attendant because of his severe mobility impairment, you should explain this requirement to the passenger. Next, you should explain that he can choose someone to serve as his attendant or you can assist him by recruiting an off-duty employee or another passenger on the flight to serve as his attendant. You must not charge for the transportation of the attendant. You should also explain that the purpose of the attendant is to assist in the case of an emergency evacuation.

Chapter 5: Assisting Air Travelers With Disabilities Boarding, Deplaning, and During the Flight

A. Aircraft Accessibility
B. Seating Assignments and Accommodations
C. Boarding and Deplaning Assistance
D. Stowing and Treatment of Personal Equipment
E. Services in the Cabin
F. Safety Briefings

A. Aircraft Accessibility

In order to assist passengers with a disability, it is important for you to have some understanding of how aircraft have been made accessible to accommodate those passengers. The following features are required for aircraft ordered by the carrier after April 5, 1990, or delivered to the carrier after April 5, 1992. In addition, different size airplanes must be equipped with different features according to the law. For example:

• Aircraft with 30 or more passenger seats must have movable aisle armrests on at least half of the aisle seats where it is feasible and it does not interfere with safety. [Secs. 382.21(a)(i) and (ii)] (Movable armrests are not feasible where tray tables and video entertainment systems are installed.);

• Aircraft with 100 or more passenger seats must have priority storage space within the cabin to stow at least one passenger's folding wheelchair [Sec. 382.21(a)(2)] and DOT has interpreted that to mean a space at least 13 inches wide, 36 inches high, and 42 inches long;

• Aircraft with more than one aisle in which lavatories are provided must include at least one lavatory accessible to passengers with a disability accessing the lavatory with an on-board wheelchair [Sec. 382.21(a)(3)];

• Aircraft with more than 60 passenger seats having an accessible lavatory must be equipped with an on-board wheelchair [Sec. 382.21(a)(4)(i)]; and

• Aircraft with more than 60 passenger seats having an inaccessible lavatory must be equipped with an on-board wheelchair when a passenger with a disability informs the carrier (providing advance notice under Sec. 382.33(b)(8)) that the passenger can use an inaccessible lavatory but cannot reach the lavatory from a seat without the use of an on-board wheelchair. [Sec. 382.21(a)(4)(ii)]

Aircraft in service on April 5, 1990, are not required to be retrofitted for the sole purpose of enhancing accessibility. [Sec. 382.21(b)(1)] However, with respect to all aircraft with more than 60 passenger seats operated under 14 CFR part 121, regardless of the age of the aircraft, carriers must provide on-board wheelchairs if (i) the aircraft has an accessible lavatory; or (ii) a passenger with a disability gives up to 48 hours' notice that the passenger can use an inaccessible lavatory. [Sec. 382.21(b)(2)] Whenever an aircraft operating under 14 CFR part 121 which does not have the accessibility features set forth above undergoes replacement of (i) cabin interior elements or lavatories, or (ii) existing seats with newly-manufactured seats (*i.e.*, previously unused), the carrier must comply with the accessibility features set forth above with respect to the feature being replaced. [Sec. 382.21(c)]

Where part 382 requires a particular aircraft to have an on-board wheelchair and a stowage space within the cabin for at least one passenger's folding wheelchair, that aircraft must have stowage spaces for both of these chairs and must accommodate both of these chairs as required by law. [Secs. 382.21(a)(4)(i) and 382.21(a)(2)]

Any replacement or refurbishing of the aircraft cabin must not reduce existing accessibility to a level below that specified under the law. [Sec. 382.21(e)] Carriers must maintain aircraft accessibility features in proper working order. [Sec. 382.21(f)]

B. Seating Assignments and Accommodations

Only Safety Affects Seat Assignments

You must not exclude a passenger with a disability from any seat in an exit row or other location or require a passenger with a disability to sit in a particular seat based on the passenger's disability, except to comply with FAA safety requirements. [Sec. 382.37(a)] If a passenger's disability results in involuntary behavior that would result in refusal of transportation under Section 382.31 and the safety problem could be addressed by seating the passenger in a particular location, you must offer the passenger that particular seat location as an alternative to refusing transportation. [Sec. 382.37(b)]

Example: A passenger with Tourette's syndrome—a neurological disability that manifests itself by episodes of shaking, muscle tics, and/or spasms and uncontrolled shouting, barking, screaming, cursing, and/or abusive language—approaches the check-in desk, self-identifies as a passenger with a disability, and presents brochures explaining the disability to the agent. What should you do?

As long as safety is not an issue, you cannot restrict this passenger from any particular seat, including an exit row. If this passenger's disability causes him to physically touch other passengers or flight crew involuntarily, safety considerations could require that he be seated in his own row, if available, as an alternative to being refused transportation. However, if the physical and/or verbal manifestations of this passenger's Tourette's syndrome are such that the safety of others would be jeopardized, *e.g.*, if the passenger with Tourette's syndrome involuntarily touches or strikes other passengers or flight crew, it might create a safety concern. Therefore, refusing transportation could be appropriate.

Otherwise, although the passenger's conduct may create an uncomfortable experience for other passengers, if his involuntary behavior only amounts to an annoyance and not a safety concern, you must not restrict the passenger with Tourette's syndrome from any seating assignment.

Four Specific Situations in Which a Seating Accommodation Must Be Provided

• If a passenger self-identifies as an individual with a disability, there are four specific situations where you must provide a particular seating accommodation, if requested. The four situations are as follows:

• If the passenger uses an aisle chair to access the aircraft and cannot readily transfer over a fixed aisle armrest, you must provide a seat in a row with a movable armrest if one exists [Sec. 382.38(a)(1)];

• If the passenger (i) is a passenger who is traveling with an attendant who will be performing functions during the flight that airline personnel are not required to perform, *e.g.,* assistance with eating [Sec. 382.38(a)(2)(i)]; (ii) is a passenger with a visual impairment who is traveling with a reader/assistant who will be performing functions for the passenger during the flight [Sec. 382.38(a)(2)(ii)]; or (iii) is a passenger who is deaf, hard of hearing, or deaf-blind who is traveling with an interpreter who will be performing functions for the passenger during the flight, you must provide a seat for the care attendant next to the passenger with a disability [Sec. 382.38(a)(2)(iii)];

• If the passenger is accompanied by a service animal, you must provide a bulkhead seat if one exists or a seat other than a bulkhead seat, depending on the passenger's request [Sec. 382.38(a)(3)]; or

• If the passenger has a fused or immobilized leg, you must provide a bulkhead seat if one exists or other seat with more legroom than other seats on the side of the aisle that best accommodates the passenger. [Sec. 382.38(a)(4)]

Regardless of which type of system a carrier uses for handling its seat assignments, you must provide the required seating accommodation in the four specific situations described above, if requested. The type of seat assignment system will determine how a carrier fulfills its obligation to provide these seating assignments. You should be aware of your carrier's method for managing seat assignments and be able to explain it to passengers with disabilities and the general passenger population depending on the circumstances.

Advance Seat Assignments

Carriers providing advance seat assignments may employ either the seat ''blocking'' method or the ''priority'' seating method.

Seat ''Blocking'' Method

Carriers may ''block'' an adequate number of seats to provide the seating accommodations discussed above. If carriers employ this ''block'' method, they must not assign these ''blocked'' seats to passengers other than the types of passengers entitled to a seating accommodation discussed above until 24 hours before the scheduled departure of the flight. At any time up to 24 hours before the flight, carriers using the ''block'' system must assign a ''blocked'' seat to any passenger in need of a particular seating accommodation outlined in the four situations above.

If a passenger with a disability meeting the above requirements does not make a request for a seating accommodation at least 24 hours before the scheduled departure of the flight, a carrier using the ''block'' system must provide the requested seating accommodation to the extent practicable, but is not required to reassign a seat assigned to another passenger in order to do so. [Secs. 382.38(b)(1)(i), (ii), and (iii)]

Example: A passenger with a service animal calls you, a reservation agent, several days before the scheduled departure of her flight and requests a bulkhead seat. What should you do?

The aircraft has four bulkhead seats, two of which are ''blocked'' under your carrier's reservation system for passengers traveling with a service animal or passengers with an immobilized leg. Since the passenger has requested the seating accommodation more than 24 hours in advance of the scheduled departure of the flight, you must assign one of the ''blocked'' bulkhead seats to this passenger with the service animal.

If, on the other hand, the passenger with the service animal requests the bulkhead seat within 24 hours of the scheduled departure of her flight, you must provide the bulkhead seat to her and her service animal to the extent practicable, but you are not required to reassign a seat already assigned to another passenger in order to do so.

''Priority'' Seating Method

Carriers may designate an adequate number of ''priority'' seats for passengers with a disability who meet the above requirements and who request a seating accommodation. In this case, the carrier must provide notice to any passenger assigned to a ''priority'' seat (other than passengers with a disability entitled to a seating accommodation in one of the four situations discussed above) that they are subject to being reassigned to another seat if necessary to provide a seating accommodation required under the law. The carrier may provide this notice through its computer reservation system, verbal information provided by reservations personnel, counter signs, seat cards or notices, frequent-flyer literature, or other appropriate means. [Sec. 382.38(b)(2)(i)] The carrier must provide a ''priority'' seat to a passenger with a disability entitled to such accommodation if the passenger requests the accommodation and checks in at least one hour before the scheduled departure of the flight. If all of the designated ''priority'' seats have been assigned to other passengers who do not have disabilities, the carrier must reassign the seats of the other passengers to accommodate the passenger with a disability entitled to a seating accommodation as discussed above. [Sec. 382.38(b)(2)(ii)]

If a passenger with a disability does not check in at least one hour before the scheduled departure of the flight, a carrier using the ''priority'' seating system must provide the requested seating accommodation, to the extent practicable, but is not required to reassign a seat assigned to another passenger in order to do so. [Sec. 382.38(b)(2)(iii)]

Example: A passenger with an immobilized leg requests a bulkhead seat and checks in two hours before the scheduled departure of the flight. Your carrier employs the ''priority'' seating method and has designated all four bulkhead seats on the aircraft as ''priority'' seating. Three of the bulkhead seats have already been assigned to three passengers traveling with small service animals who have requested the seating accommodations and checked in at least an hour before the scheduled departure of the flight. The fourth ''priority'' bulkhead seat has been assigned to a passenger who also checked in two hours before the flight and uses an aisle chair to enplane who prefers the bulkhead seat to a seat in a row with a movable armrest. What should you do?

The passenger who uses the aisle chair to enplane should have received notice that she has been assigned a ''priority'' seat. Because she is not a passenger with an immobilized leg or a passenger traveling with a service animal, she is not automatically entitled to a ''priority'' bulkhead seat. (However, she would be entitled to a ''priority'' seat in a row with a movable armrest if she requested one and checked in at least an hour before the scheduled departure of the flight.) The passenger using the aisle chair to enplane should have been notified that you might have to reassign her seat if a passenger with a service animal or a passenger with an immobilized leg requests a ''priority'' bulkhead seating accommodation and checks in at least one hour before the scheduled departure of the flight. Accordingly, the passenger using the aisle chair would be reassigned to a seat in a row with a movable armrest and the passenger with the immobilized leg would be assigned to the fourth ''priority'' bulkhead seat.

Seating Accommodations for Passengers With a Disability Other Than One of the Four Types Listed Above

Passengers with a disability—other than the types of passengers with a disability entitled to a seating accommodation in one of the four specific situations discussed above—may identify themselves as passengers with a disability and request a seating accommodation. [Sec. 382.38(c)]

In this case, a carrier employing the ''block'' method is not required to offer one of the ''blocked'' seats when the passenger with a disability makes a reservation more than 24 hours before the scheduled departure time of the flight. However, the carrier must assign the passenger with a disability any seat not already assigned to another passenger that accommodates the passenger's needs, even if that seat is not available for assignment to the general passenger population at the time of the request. [Secs. 382.38(c)(1)(i) and (ii)]

Example: A passenger with arthritis in his spine making his back extremely stiff calls a week before his flight and asks you, the reservation agent, for a bulkhead seat. He explains that it is much easier for him to access a bulkhead seat because he has to be lowered into the seat with assistance from another person. The aircraft has six bulkhead seats, two of which are ''blocked'' under your carrier's reservation system for passengers traveling with service animals or passengers with immobilized legs. One of the four remaining bulkhead seats is unassigned when he calls. What should you do?

Although your carrier normally reserves such seats for its frequent flier passengers, you must assign the remaining bulkhead seat to the passenger with arthritis in his spine.

In a similar situation, a carrier using the ''priority'' seating method must assign the passenger with a disability any seat not already assigned to another passenger that accommodates the passenger's needs, even if that seat is not available for assignment to the general passenger population at the time of the request. If this passenger with a disability is assigned to a ''priority'' bulkhead seat, he/she is subject to being reassigned to another seat if necessary to provide a seating accommodation to a passenger with a disability entitled to a seating accommodation required under the law, as discussed above. [Sec. 382.38(c)(2)(i) and (ii)]

Example: Suppose the same passenger, with arthritis in his spine, in Example 1 above, calls your carrier, asking for a bulkhead seat, but your carrier uses the ''priority'' seating method. The aircraft has six bulkhead seats, two of which are ''priority'' seats for passengers traveling with service animals or passengers with immobilized legs. At the time of the call, all

four of the other ''non-priority'' bulkhead seats have been assigned to other passengers, but the two ''priority'' seats are unassigned. What should you do?

You should assign the passenger with arthritis in his spine one of the two ''priority'' seats, but you must notify him that he may have his ''priority'' seat reassigned if another passenger who is entitled to a ''priority'' seat requests one. On the day of the flight, a passenger with a service animal and a passenger with a fused leg show up for the same flight and request bulkhead seats. In this instance, the passenger with arthritis in his spine would be informed that his ''priority'' seat must be assigned to one of those passengers and that he must be moved to another seat. As a matter of good customer service, he may be assigned an aisle seat because it would make it easier to access.

No Advance Seat Assignments

If a carrier does not provide advance seat assignments, you must allow passengers who identify themselves as passengers with a disability in need of a seating accommodation to pre-board—even before other passengers entitled to pre-board—and select the seat assignment that best meets their needs. [Sec. 382.38(d)] If a carrier wishes to comply with this requirement in another way, it must receive written approval from DOT. [Sec. 382.38(e)]

Other Issues Relating to Seat Assignments

You must provide a seat assignment accommodation when requested by a passenger with a disability even if the seat is not otherwise available for assignment to the general passenger population at the time of the request. [Sec. 382.38(f)] You cannot reassign the seat of a passenger with a disability who has received a seat assignment to accommodate a disability in the event of a subsequent request for the same seat unless the passenger with a disability consents to the reassignment. [Sec. 382.38(g)]

You must not deny transportation to any individual on a flight in order to provide a seat accommodation to a passenger with a disability. [Sec. 382.38(h)] You are also not required to provide more than one seat per ticket or a seat in a class of service other than the one the passenger has purchased to accommodate a passenger with a disability requesting a seating accommodation. [Sec. 382.38(i)] You must comply with all FAA safety requirements in responding to requests from individuals with a disability for seating accommodations. [Sec. 382.38(j)]

Example: A passenger with an economy class ticket and an immobilized leg (with a full-leg cast) arrives more than an hour before his flight is scheduled to depart. He arrives at the check-in counter, explains his disability, and insists that he is entitled to a seat in first class to accommodate his extended leg. Your carrier uses the ''priority'' seating method for advance seat assignments. What should you do?

Since the passenger has identified himself as a passenger with a disability and has requested a seat assignment to accommodate him, you must provide a bulkhead seat or other seat with more legroom than other seats on the side of the aisle that best accommodates him. While first class seats generally have more legroom than economy class seats, you are not required to provide a seat in a class of service other than the one the passenger has purchased in order to accommodate him. You should explain politely and respectfully that under the law, you must seat him in (i) a bulkhead or (ii) an aisle seat in economy class on the side of the plane that would best accommodate his leg. At his subsequent request for a bulkhead seat, you must arrange to move another passenger from the bulkhead seat and give it to the passenger with the immobilized leg. Although you are not required to do so under the law, you may choose to seat him in first class.

C. Boarding and Deplaning Assistance

If a passenger with a disability requests assistance getting on or off an airplane or you offer assistance and the passenger consents to the type of boarding or deplaning assistance you offer, you must provide such assistance. [Sec. 382.39(a)] The type of assistance you must offer includes, as needed, services personnel and the use of wheelchairs, ramps, or mechanical lifts. [Sec. 382.39(a)(1)]

Keep in mind, however, that a wheelchair is not required or desired in all cases. A wheelchair may not be an appropriate assistive device in a particular situation. For example, a passenger with vision impairment may need a sighted guide, not a wheelchair.

Carriers must train employees to proficiency in the use of the boarding assistance equipment and procedures regarding the safety and dignity of passengers receiving boarding assistance. [Secs. 382.40(d) and 382.40a(d)] Therefore, regardless of the size of the aircraft, you should know how to use mechanical boarding assistance devices and the appropriate procedures for providing boarding assistance.

In addition, you should be aware that when level-entry boarding is not required or if a lift is temporarily not functioning, you must obtain the consent of the passenger with a disability to the means of boarding assistance. [Sec. 382.40(c)(5)] Therefore, in such situations, you should present the various options and provide only the type of boarding assistance to which the passenger consents. If the passenger does not consent to the available means of boarding assistance, you should contact a CRO.

You cannot leave a passenger in a boarding wheelchair or other device in which the passenger is not independently mobile for more than 30 minutes. [Sec. 382.39(a)(3)]

Carriers must provide access to the airplane for a passenger with a disability by a level-entry loading bridge or accessible passenger lounges where these means are available. [Sec. 382.39(a)(2)] But depending on the size of the aircraft, carriers have different obligations to provide boarding assistance to individuals with a disability using mechanical lifts, ramps, or other suitable devices that do not require you to physically lift or carry passengers up stairs. [Secs. 382.40 and 382.40a]

Boarding and Deplaning Assistance Where Level-Entry Boarding Is Unavailable

For aircraft with 19 or more seats operating at airports with 10,000 or more annual enplanements where level-entry boarding is not available [Secs. 382.40(a) and 382.40a(a)], carriers must provide boarding assistance to passengers with a disability using mechanical lifts, ramps, or other suitable devices that do not require you to physically lift or carry passengers up stairs. [Secs. 382.40(b) and 382.40a(b)] In addition, carriers may require that a passenger seeking boarding assistance by use of a lift check in for the flight one hour before the scheduled departure time. [Secs. 382.40(c)(3) and 382.40a(c)(3)] You must make a reasonable effort to accommodate the passenger and provide the boarding assistance by lift even if the passenger does not check in one hour before the scheduled departure time, as long as it would not delay the flight.

Boarding assistance by mechanical lift is not required in the following situations:

- On aircraft with fewer than 19 seats;
- On float planes;
- On the following 19-seat capacity aircraft models that are unsuitable for boarding assistance by lift: the Fairchild Metro, the Jetstream 31, and the Beech 1900 (C and D Models);
- On any other 19-seat aircraft model determined by DOT to be unsuitable for boarding assistance by lift; [Sec. 382.40(c)(4)]; or
- On any widebody aircraft determined by DOT to be unsuitable for boarding assistance by lift, ramp, or other device.

If boarding assistance by lift is not required (as set forth above) or it cannot be provided for reasons beyond the

control of the carrier, *e.g.*, the mechanical lift is not functioning, then boarding assistance must be provided by any available means, except physically hand-carrying the passenger. Hand-carrying is defined as directly picking up the passenger's body in the arms of one or more carrier personnel to effect a change of level that the passenger needs to enter or leave the aircraft. [Sec. 382.39(a)(2)].

Except in an Emergency Evacuation, No Hand-Carrying Passengers

Under no circumstances—except for emergency evacuations—should you physically pick up a passenger with a disability to provide boarding or deplaning assistance. [Sec. 382.39(a)(2)]

Example: A woman asks for assistance in boarding a flight with 30 seats. General boarding for passengers is by a set of stairs on the tarmac. When she arrives at the gate and asks for boarding assistance, she is provided a boarding wheelchair, but you inform her that the mechanical lift is out of order. The passenger tells you to physically pick her up and carry her up the stairs and onto the plane because she really needs to make the flight. What should you do?

Under the law, you must not physically hand-carry the passenger onto the plane. Hand-carrying is only appropriate in the case of an emergency evacuation. Even though the law states that the passenger must consent to the type of boarding assistance and she has requested to be hand carried, you must not hand-carry her onto the aircraft. Instead, you should contact a CRO for advice about options for alternative means of boarding the passenger, *e.g.*, carrying the boarding wheelchair, with the passenger in it, up the stairs and onto the plane. Next, you and the CRO should explain to the passenger that, under the law, you are not permitted to physically hand-carry her onto the plane. In addition, you should explore other available options for assisting this passenger with boarding the aircraft, including carrying the passenger onto the plane in a boarding wheelchair or arranging for another flight with a working lift or a jet bridge. If the passenger consents to being carried onto the plane in the boarding wheelchair, you may do so. Regardless, you should notify the appropriate personnel that the mechanical lift is not functioning properly and arrange for repair as quickly as possible.

D. Stowing and Treatment of Personal Equipment

You should be familiar with the legal requirements for storage and treatment of personal equipment used by passengers with a disability, including ventilator/respirators, non-spillable batteries, canes, wheelchairs, and other assistive devices. [Sec. 382.41]

Storing Assistive Devices in the Aircraft Cabin

You must allow passengers with a disability to bring their personal ventilators/respirators, including non-spillable batteries, on board the aircraft as long as FAA safety regulations are met. [Sec. 382.41(b)] You must permit passengers to stow their canes and other assistive devices in the cabin and close to their seats, consistent with FAA safety regulations concerning carry-on items. [Sec. 382.41(c)]

Example: Because a passenger with a disability arrived at the airport late, time and space constraints on board the aircraft require you to store her assistive walking device in first class, even though her seat assignment is in the back of the plane in economy class. She insists that she has the right to have her assistive walking device stored near her. She explains further that she would need this device to access and use the lavatory. What should you do?

You must permit a passenger with a disability to bring her assistive devices into the cabin as long as FAA safety regulations are met. [Sec. 382.41(b)] In addition, the rule generally requires you to allow a passenger to stow her assistive device close to her seat, consistent with FAA safety regulations concerning carry-on items. [Sec. 382.41(c)] Under the circumstances, you should reassess the storage space and consider either moving the passenger closer to her walker or the walker closer to the passenger.

You must not count assistive devices brought on board the aircraft by a passenger with a disability toward the limit on the passenger's carry-on items. [Sec. 382.41(d)] Wheelchairs and other assistive devices that cannot be stowed in the cabin must be stowed in the baggage compartment with priority over other cargo and baggage. [Sec. 382.41(f)(3)] In addition, because carriers cannot charge for facilities, equipment, or services required under the law to be provided to qualified individuals with a disability, no charge would be imposed if a wheelchair or assistive device exceeded the weight limit on checked baggage. [Sec. 382.57]

Example: A passenger with multiple sclerosis is one of many passengers on a flight who is informed that the flight will not be taking off because of mechanical problems. It is late at night and the carrier has announced that the passengers will be put up in a hotel for the night and rescheduled on a flight leaving the following morning. The passenger with multiple sclerosis approaches you when she hears the announcement and explains that she needs access to her checked luggage because it contains her syringe and medication for her multiple sclerosis which she must take on a daily basis. What should you do?

The passenger's syringe and medication would be considered an assistive device under the law. Under Section 382.41(f)(1), because the passenger requested the return of her assistive device, you must return it to her. As a matter of customer service, you may also advise such passengers (*e.g.*, via the carrier's web site or other consumer information materials) that the carrier recommends to all of its passengers who require such medication or other items for medical necessity to bring a carry-on bag containing the medication or other item on board. Such medication carry-on bags would not be counted toward the passenger's carry-on baggage allotment.

Wheelchairs

Carriers must permit storage in the cabin of wheelchairs or components of wheelchairs, including folding, collapsible, or breakdown battery-powered wheelchairs [Sec. 382.41(e)] as follows:

- In overhead compartments and under seats consistent with FAA safety regulations for carry-on items. [Sec. 382.41(e)(1)]
- If the aircraft contains a closet or storage area of a size sufficient to accommodate a passenger's folding, collapsible, or breakdown wheelchair, the carrier must designate priority stowage space for at least one passenger's wheelchair in that area. If a passenger with a disability decides to pre-board, the passenger may stow the wheelchair in the designated storage space with priority over the carry-on items brought on board by other passengers or crew members boarding the plane at the same airport. If, on the other hand, a passenger with a disability chooses not to pre-board, the passenger may stow the wheelchair in the designated storage space on a first-come, first-served basis along with all other passengers seeking to stow carry-on items in the space. [Sec. 382.41(e)(2)]
- If the aircraft cabin does not contain a storage area of a size sufficient to accommodate a folding, collapsible, or breakdown wheelchair, you must stow the wheelchair in the cargo compartment with priority over other luggage. [Sec. 382.41(e)(3)]

Wheelchairs Unable To Be Stowed in the Aircraft Cabin as Carry-On

When a folding, collapsible, or break-down wheelchair cannot be stowed in the cabin as carry-on baggage, you must ensure the timely checking and return of the passenger's wheelchair or other assistive device as close as possible to the door of the aircraft, so that the passenger with a disability can use his or her own equipment, where possible, consistent with DOT regulations concerning transportation of hazardous materials. [Sec. 382.41(f)]

If, on the other hand, a passenger with a disability requests, you should return the wheelchair or other assistive device at the baggage claim area instead of at the door of the aircraft. [Sec. 382.41(f)(1)]

A passenger's wheelchair or other assistive device must be stowed in the baggage compartment with priority over

other items and baggage. [Sec. 382.41(f)(3)] In order to ensure the timely return of a passenger's wheelchair or other assistive device, it must be among the first items retrieved from the baggage compartment. [Sec. 382.41(f)(2)] If giving priority to wheelchairs and other assistive devices results in passengers' non-assistive device-related baggage being unable to be carried on the flight, you must use your best efforts to ensure that the non-assistive device-related baggage reaches the passengers' destination within four hours of the scheduled arrival time of the flight.

Battery-Powered Wheelchairs

You must accept a passenger's battery-powered wheelchair, including the battery, as checked baggage unless baggage compartment size and aircraft airworthiness considerations prohibit it. [Sec. 382.41(g)]

Carriers may require that a passenger with a disability wishing to have a battery-powered wheelchair transported on a flight (including in the cabin where required) check in for the flight one hour before the scheduled departure time. [Sec. 382.41(g)(1)] You must also make a reasonable effort to accommodate the passenger and transport the wheelchair even if the passenger does not check in one hour before the scheduled departure time, as long as it would not delay the flight.

If (i) the battery on the passenger's wheelchair has been labeled by the manufacturer as non-spillable or (ii) the battery-powered wheelchair with a spillable battery can be loaded, stored, secured, and unloaded in an upright position, you must not require the battery to be removed and separately packaged. You may remove and package separately any battery that appears to be damaged or leaking. [Sec. 382.41(g)(2)]

When it is necessary to detach a battery from a wheelchair, you must provide packaging for the battery and package the battery consistent with appropriate hazardous materials regulations. [Sec. 382.41(g)(3)] You must not charge for such packaging. [Sec. 382.57]

You must not drain batteries. [Sec. 382.41(g)(4)]

If a passenger with a disability requests, you must stow a folding, breakdown, or collapsible battery-powered wheelchair in the cabin consistent with the requirements set forth above. If the wheelchair can be stowed in the cabin without removing the battery, then you must not remove the battery. If the wheelchair cannot be stowed in the cabin without removing the battery, then you must remove the battery and stow it in the baggage compartment in the proper packaging as set forth above. In this case, you must permit the wheelchair, with the battery removed, to be stowed in the cabin. [Sec. 382.41(g)(5)]

You must permit passengers with a disability to provide written instructions concerning the disassembly and reassembly of their wheelchairs. [Sec. 382.41(h)]

When you disassemble wheelchairs or other assistive devices for stowage, you must reassemble them and ensure their prompt return to the passenger with a disability. You must return a wheelchair or other assistive device to the passenger in the same condition in which you received it. [Sec. 382.43(a)]

On domestic flights, the normal baggage liability limits do not apply to loss, damage, or delay concerning wheelchairs or other assistive devices. Instead, the criterion for calculating the compensation for lost, damaged, or destroyed wheelchairs or other assistive devices must be the original price of the device. [Sec. 382.43(b)] Moreover, you must not require a passenger with a disability to sign a waiver of liability for damage to or loss of a wheelchair or other assistive device, although you may make notes about preexisting damage or conditions of wheelchairs or other assistive devices. [Sec. 382.43(c)]

Example: A passenger with a battery-powered wheelchair with a spillable battery arrived at his departure gate for his domestic flight and airline personnel there determined that the wheelchair could not be loaded, stored, secured, and unloaded in an upright position. Therefore, they directed the appropriate personnel to remove and store the battery and gate check the wheelchair. When the passenger arrives at his destination and the battery is replaced, it is done so incorrectly and the entire electronic circuit board of the wheelchair is severely damaged, rendering the wheelchair temporarily unusable. What should you do?

Upon request, you must permit passengers with a disability to provide written instructions concerning the disassembly and reassembly of their wheelchairs. As a matter of good customer service, you should apologize to the passenger for the problem and the resulting inconvenience. In addition, you should explain to the passenger that the carrier will compensate him for the damaged wheelchair in an amount up to the original purchase price of the device. If, for example, the passenger provides you with documentation that the original cost of the wheelchair was $10,000 and verification that it cost $2,900 to be repaired, the carrier would pay the passenger or the repair company $2,900 to cover the cost of the wheelchair repair. In addition, paying for reasonable costs associated with the rental of a wheelchair by the passenger during the repair period could also be recovered by the passenger from the carrier.

E. Services in the Cabin

Within the aircraft cabin, when requested by a passenger with a disability or when offered and accepted by a passenger with a disability, you must assist the passenger in:

- Moving to and from a seat as part of enplaning and deplaning [Sec. 382.39(b)(1)];
- Preparing for eating, such as opening packets and identifying food [Sec. 382.39(b)(2)];
- If there is an on-board wheelchair, using the on-board wheelchair to enable the passenger to move to and from the lavatory which, if requested, could entail transferring the passenger from a seat to an aisle chair [Sec. 382.39(b)(3)];
- Moving to and from the lavatory, if the passenger is semi-ambulatory, not involving lifting or carrying the individual [Sec. 382.39(b)(4)]; and
- Loading and retrieving carry-on items, including mobility aids and other assistive devices stowed in the cabin [Sec. 382.39(b)(5)];

Example 1: A passenger using a boarding wheelchair asks for help storing her carry-on item in the overhead compartment because, it is apparent, her disability limits her ability to reach up to the overhead compartment. What should you do?

You must either assist the passenger directly or indicate that you will find the appropriate employee to assist her in stowing her carry-on bag in the overhead compartment.

Example 2: A passenger who walks onto the plane for an evening flight with a rolling carry-on bag asks for help lifting his bag and putting it in the overhead storage compartment. What should you do?

Since he has not identified himself as a qualified individual with a disability, you may want to ask for further clarification. Because, under the law, normally you cannot ask a passenger if he has a disability, you might ask, ''Is there any particular reason you need assistance sir?'' or ''Could you tell me a little about your need for help?'' or ''Are you unable to lift it yourself?'' If, for example, the passenger explains that he has multiple sclerosis and his muscles are particularly fatigued at the end of the day and therefore he needs help lifting things, you must either assist the passenger directly or indicate that you will find the appropriate employee to assist him in stowing his carry-on bag. If, on the other hand, the passenger states that he is merely tired and doesn't feel like lifting the bag, the passenger is not a qualified individual with a disability and, therefore, you are not obligated to assist him. You may politely decline to assist him, depending on the carrier's policies regarding assistance with stowing carry-on items for passengers.

You are not required to provide extensive special assistance to passengers with a disability such as:

• help with eating, for example, cutting food and feeding the passenger [Sec. 382.39(c)(1)];

• assistance within the restroom or at the passenger's seat with elimination functions [Sec. 382.39(c)(2)]; or

• provision of medical services. [Sec. 382.39(c)(3)]

You cannot require that a passenger with a disability sit on a blanket. [Sec. 382.55(b)]

F. Safety Briefings

Individual Safety Briefings

Under certain circumstances, you must provide individual safety briefings to a passenger with a disability. Federal safety regulations require you to conduct an individual briefing for each passenger who may need assistance to move expeditiously to an emergency exit. You must brief the passenger and the attendant, if any, on the routes to the appropriate exit and on the most appropriate time to move toward the exit in the event of an emergency. In addition, you must ask the passenger and the attendant, if any, the most appropriate manner of assisting the passenger. [14 CFR 121.571(a)(3)] You may offer such briefings to other passengers. [Sec. 382.45(b)(2)]

In the case of private safety briefings for passengers with a disability:

• You must conduct the briefing as inconspicuously and discreetly as possible. [Sec. 382.45(b)(3)]

• You must not require a passenger with a disability to demonstrate that the person has listened to, read, or understood the information presented, except to the extent that you or other employees impose such a requirement on all passengers with respect to the general safety briefing.

• You must not take any action adverse to a passenger with a disability on the basis the individual has not ''accepted'' the briefing. [Sec. 382.45(b)(4)]

Accommodations for Passengers Who are Deaf or Hard of Hearing

If the safety briefings are presented to passengers on video screens, carriers must ensure that the video presentation is accessible to passengers who are deaf or hard of hearing. [Sec. 382.47(b)] More specifically, carriers must implement this requirement by using open captioning or an inset for a sign language interpreter as part of the video presentation. [Sec. 382.47(b)(1)] A carrier may use an equivalent non-video alternative to this requirement only if neither open captioning nor a sign language interpreter inset could be placed in the video presentation without so interfering with it as to render it ineffective or if it would not be large enough to be readable. [Sec. 382.47(b)(2)] Carriers must implement these requirements by substituting captioned video materials for uncaptioned video materials as the uncaptioned materials are replaced in the normal course of the carrier's operations. [Sec. 382.47(b)(3)]

Timely and Complete Access to Information

Carriers must ensure that, upon request, passengers with a disability, including those who are (i) blind or visually impaired; or (ii) deaf, hard of hearing, or deaf-blind, have timely access to information being provided to other passengers, including but not limited to, information concerning ticketing, flight delays, schedule changes, connections, flight check-in, gate assignments, the checking and claiming of luggage, and aircraft changes that will affect the travel of passengers with a disability. [Sec. 382.45(c)] Passengers who are unable to obtain the information from the audio or visual systems in airports or on board must request the information from you. In other words, as a practical matter, passengers may have to identify themselves as (i) blind or visually impaired; or (ii) deaf, hard of hearing, or deaf-blind in order to obtain the information. See Chapter 7 in general and ''Tips for Assisting People Who Are Blind or Visually-Impaired'' and ''Tips for Assisting People Who Are Deaf, Hard of Hearing, or Deaf-Blind'' in particular.

Chapter 6: Assisting Air Travelers With Disabilities With Their Complaints

A. Complaint Procedures and Complaints Resolution Officials (CRO's)
B. Process To Resolve Complaints
C. General Complaint Resolution Tips
D. Recording, Categorizing, and Reporting Written Disability-Related Complaints Received By Carriers

A. Complaint Procedures and Complaints Resolution Officials (CRO's)

Carriers must (i) establish a procedure for resolving disability-related complaints raised by passengers with a disability and (ii) designate at least one CRO to be available to handle disability-related complaints at each airport the carrier serves. [Sec. 382.65(a)] Each CRO must be trained and thoroughly proficient with respect to the rights of passengers with disabilities under the ACAA and accompanying regulations. [Secs. 382.61(a)(7) and 382.65(a)(3)]

Availability of the CRO

Carriers must make a CRO available at all times the carrier is operating at each airport it serves. [Secs. 382.65(a)(1) and (2)] The CRO may be made available in person or by telephone. If the CRO is made available by telephone, it must be at no cost to the passenger. The CRO must be accessible via a TTY for passengers who are deaf or hard of hearing. If a passenger with a disability, or someone on behalf of a passenger with a disability, complains about an alleged violation or potential violation of the law, you must put the customer in touch with a CRO on duty. [Sec. 382.65(a)(1)] A CRO has the authority to resolve complaints by passengers with a disability on behalf of the carrier. [Sec. 382.65(a)(4)]

Complaints Made During the Trip

When a passenger with a disability makes a complaint to a CRO during the course of the trip (*e.g.*, over the telephone or in person at an airport), the CRO must promptly take action to resolve the problem as follows:

• If no violation of the law has occurred yet, the CRO must take action or direct other employees to take action to ensure compliance. Only the pilot-in-command of an aircraft has final authority to make decisions regarding safety and the CRO cannot countermand a pilot's decisions regarding safety. [Sec. 382.65(a)(5)(i)]

• If a passenger complains about a disability-related issue or alleges a violation of the law that has already occurred and the CRO agrees that a violation has occurred, the CRO must provide the complaining passenger with a written statement summarizing the facts at issue and the steps, if any, the carrier proposes to take in response to the violation. [Sec. 382.65(a)(5)(ii)] This statement must be provided in person to the passenger at the airport, if possible; otherwise, it must be forwarded to the passenger within 10 calendar days of the complaint. [Sec. 382.65(a)(5)(iv)]

• If a passenger alleges a violation of the law but the CRO determines that no violation has occurred, the CRO must provide a written statement including a summary of the facts and the reasons for the determination. [Sec. 382.65(a)(5)(iii)] This statement must be provided in person to the passenger at the airport, if possible; otherwise, it must be forwarded to the passenger within 10 calendar days of the complaint. [Sec. 382.65(a)(5)(iv)]

The written statement provided to the complaining passenger must include information about the right to pursue DOT enforcement action under the law. [Sec. 382.65(a)(5)(iv)]

Written Complaints Received After the Trip

You should be aware of your carrier's established procedure for resolving written complaints from passengers with a disability. [Sec. 382.65(b)] In addition, under the law, a carrier is not required to respond to a written complaint postmarked more than 45 days after the date of the alleged violation. [Sec. 382.65(b)(1)] Your carrier must provide a dispositive written response within 30 days of receipt of a written complaint describing a situation that would constitute a violation of the law. [Sec. 382.65(b)(3)]

You should provide all information regarding written complaints—and in general—in a polite and respectful manner as a matter of high standards of customer service.

Depending on the carrier's determination, its response to a written complaint must include the following:

- if the carrier agrees that a violation has occurred, the carrier must provide a written statement to the complaining passenger summarizing the facts and stating what steps, if any, the carrier proposes to take in response to the violation. [Sec. 382.65(b)(3)(i)]
- if the carrier denies that a violation has occurred, the written response must include a summary of the facts and the carrier's reasons under the law for making its determination. [Sec. 382.65(b)(3)(iii)]

The written statement provided to the complaining passenger must include information about the right to pursue DOT enforcement action under the law. [Sec. 382.65(b)(3)(iii)]

Responsibilities of Employees Other Than the CRO

You should be aware that all personnel dealing with the traveling public should be trained to proficiency regarding the legal requirements and the carrier's policies concerning the provision of air travel to individuals with disabilities. [Sec. 382.61(a)(1)] These employees must receive training regarding awareness about and appropriate responses to individuals with physical, sensory, mental, and emotional disabilities. [Sec. 382.61(a)(2)]

You should be familiar with your carrier's established procedures and the CRO's duties and responsibilities with respect to resolving a complaint raised by a passenger with a disability. You should convey this information to passengers with a disability under the appropriate circumstances.

When resolving complaints from a passenger with a disability, you should keep the following in mind:

- Request assistance from a CRO immediately or assist the passenger with a disability in doing so, if the passenger requests to speak with a ''supervisor'' or ''manager.''
- Contact a CRO if you are having any difficulty providing an accommodation required by law or carrier policy to a passenger with a disability.
- Carry the information about how to contact a CRO with you at all times. Remember a CRO may be available in person or by telephone but a CRO must be available during all hours of the carrier's operation at the airport.

B. Process To Resolve Complaints

When you receive a complaint from a passenger with a disability, there are certain requirements under the law with which you, your carrier, and a CRO must comply. Even if you call a CRO, it is important to be able to assess the situation firsthand through observation, communication, and information gathering because a CRO is not always available on site and may only be involved in resolving the complaint via telephone.

Having a consistent process for fielding these complaints will assist you in complying with those legal obligations and providing good customer service. Learning what the particular problem is, finding the applicable rule, regulation, or policy that addresses the situation, and remedying the situation by taking affirmative action are important aspects of the process.

The ACCESS checklist set forth below provides an easy way to remember how to respond to these complaints. Remember ACCESS as a thorough and useful process through which you can address the complaint or refer it to a CRO as needed.

ACCESS

Ask the passenger with a disability how you may assist with concerns. Listen actively and carefully to what the passenger tells you and ask for further clarification when necessary.

Call a CRO and report the complaint if you are unable to resolve the problem. If a passenger with a disability would like to contact a CRO directly, you must assist the passenger in doing so. If your carrier has an internal procedure for documenting complaints that requires CRO involvement or for documenting other types of passenger complaints, fill out the appropriate forms, if any, and provide relevant and detailed information to satisfy that internal carrier policy.

Check this manual (and Appendix V containing the full text of Part 382) and your carrier's policies (concerning the law as well as good customer service) to identify the issue at hand. If you need assistance, ask a CRO on duty.

Evaluate the relevant provisions of this manual (and Appendix V containing the full text of Part 382) and your carrier's policies to determine the appropriate options for resolving the problem considering the following factors:

- Does the solution comply with the law?
- Does the solution comply with your carrier's policies?
- Is there a question of airline and passenger safety? (Remember, the pilot-in-command of an aircraft is the final arbiter of a safety issue.)
- Does the solution meet the needs of the passenger with a disability?
- Can the solution be implemented in a timely manner, *e.g.*, to help the passenger with a disability make the flight or receive the accommodation?

Solve the problem by providing the passenger with a disability with the information, services, or appropriate action required under the law.

Satisfy the passenger with a disability to the extent possible when complying with the law. Communicating the basis for the action taken (or not taken) to the passenger with a disability is critical. Thank the passenger for bringing the problem to your attention and ask if the passenger has any additional questions about the solution you or a CRO has provided. Ask if you are able to assist with any other concerns.

C. General Complaint Resolution Tips

- You should familiarize yourself with this manual (and Appendix V containing the full text of Part 382) and your carrier's policies (concerning the law as well as good customer service). First and foremost, you must not violate the civil rights of passengers with a disability. In addition, you should treat passengers in a manner consistent with good customer service policy.
- You should work as quickly as possible to ensure prompt service and, at the same time, respect for the needs of passengers with a disability.
- You should be aware of your carrier's procedures for addressing complaints. You should take the time necessary to resolve the complaint while maintaining flight schedules. If an unfamiliar situation presents itself or you have any doubts or questions, you should contact your immediate

supervisor or a CRO for prompt resolution of the issue.

• You should make reasonable attempts to keep the passenger with a disability informed about your or other carrier personnel's progress with respect to resolving a complaint.

• You should avoid engaging in an argument with a passenger with a disability presenting a complaint.

• You should listen carefully and actively, evaluate appropriate options under the law and your carrier's policy, and communicate the basis for the action taken (or not taken) to the passenger with a disability in a respectful and polite manner to ensure effective complaint resolution.

• Even if you call a CRO, it is important to be able to assess the situation firsthand through observation, communication, and information gathering because a CRO is not always available on site and may only be involved in resolving the complaint via telephone.

D. Recording, Categorizing, and Reporting Written Disability-Related Complaints Received By Carriers

Certificated U.S. carriers and foreign carriers[1] operating to, from, and in the United States using at least one aircraft with more than 60 passenger seats must record, categorize, and report written disability-related complaints received by the carrier to DOT on an annual basis. [Secs. 382.70(b) and (c)] The first annual report covers calendar year 2004 and was due to be submitted to DOT by January 25, 2005. [Sec. 382.70(d)] In addition, carriers must use the form specified in Appendix A to Part 382 when making the annual report to DOT. See Appendix V. Carriers must develop a system for recording and collecting data regarding specific categories of written disability-related complaints that they receive according to the type of disability and the nature of the complaint. [Sec. 382.70(c)]

Chapter 7: Interacting With People With Disabilities

When assisting and interacting with individuals with disabilities, you should use language that gives an accurate, positive view of them. You should focus on the person first, not the disability, and avoid language that reinforces myths, stereotypes, and discrimination.

Below is a chart listing some currently acceptable terminology and terminology to avoid when addressing or referring to people with disabilities.

Use	Avoid
Person with a disability	Handicapped or deformed.
Person who is deaf	The deaf.
Person who is blind or visually-impaired	The blind; the visually-impaired.
Woman with an emotional disorder, psychiatric illness, or psychiatric disability.	Crazy, demented, lunatic, psycho, or maniac.
Person using a wheelchair, wheelchair user	Confined to a wheelchair, wheelchair bound, or crippled.
Person with AIDS or living with AIDS	Afflicted with AIDS, victim of AIDS, or suffers from AIDS.
Congenital disability	Birth defect.
Man who has cerebral palsy	Afflicted with cerebral palsy or suffers from cerebral palsy.
Woman who has Down syndrome	Mongol, mongoloid, or retarded.
Person with head injury, people who have sustained brain damage, or woman who has traumatic brain injury.	Brain damaged.
Person who has a speech disorder or woman without speech	Mute or dumb.
Man with quadriplegia or woman who is paralyzed	Crippled.
Person of small or short stature	Dwarf.
Nondisabled	Normal, able-bodied, healthy, or whole.

It may not be apparent whether a person is an individual with a disability. You should provide an opportunity for a passenger to self-identify as an individual with a disability by asking if the person needs assistance and, if so, how best you can assist with those needs. Keep in mind that you cannot require an individual with a disability to accept special services, including pre-boarding.

Some Examples of Physical Impairments [Sec. 382.5(a)(1)]:

• Orthopedic impairment;
• Deafness (profound hearing loss);
• Hard of hearing (mild to profound hearing loss);
• Vision impairment and blindness;
• Speech disorder;
• Cerebral palsy;
• Epilepsy;
• Muscular dystrophy;
• Multiple sclerosis;
• Cancer;
• Heart disease; and
• Diabetes.

Some Examples of Mental or Psychological Impairments [Sec. 382.5(a)(2)]:

• Mental retardation;
• Depression;
• Anxiety disorders;
• Specific learning disabilities; and
• Brain injury.

Below is a list of general tips to consider when interacting with people with disabilities followed by tips relating to interacting with individuals with one or more of the five basic types of disabilities. These tips are aimed at ensuring that services, facilities, and other accommodations are provided to passengers with disabilities in a respectful and helpful manner.

Some of the tips relate to specific legal requirements, but most of them set forth suggestions for interacting in a way that would constitute good customer service and demonstrate a sensitivity to the issues concerning passengers with disabilities. The following tips should be read and employed with the above qualification in mind.

General Tips for Interacting With Individuals With Disabilities

• *Always ask.* The most effective and simplest step for you to take when you are uncertain about a passenger's needs is to ask, ''May I assist you?'' or ''Please let me know how I can assist you.'' A passenger with a disability has the most information about his or her abilities, level of familiarity with the airport and airline, and needs when traveling.

• *Appreciate the passenger's perspective.* Take into consideration the extra time and energy that traveling may require for a person with a disability. For example, you should realize that a person with a disability may not have the flexibility and spontaneity to react

[1] Foreign carriers are covered by this section only with respect to disability-related complaints associated with any flight segment originating or terminating in the United States. [Sec. 382.70(b)].

to unexpected situations. Understand that making adjustments may take more time or may require additional attention or services for passengers with a disability.

• *Be yourself and be self-aware.* It is important to relax, be yourself, and maintain the conversational style you would use for anyone else when you are speaking with a person with a disability. Be aware of the possibility that your body language could convey discomfort or impatience; try to avoid this. Also, respect the privacy of individuals with disabilities. Asking about a person's disability can be perceived as intrusive and insensitive. It might be interpreted as placing the disability above the human being.

• *Don't make assumptions.* Don't assume that all individuals with a disability automatically need assistance. Keep in mind that if the setting is accessible, individuals with a disability would usually prefer to operate independently.

• *Emotions matter.* Acknowledge the emotions of the person in a stressful situation, *e.g.*, frustration or disappointment. When acknowledging the emotions of others, it may be more effective to use ''you'' rather than ''I.'' For example, use, ''You must be frustrated by having to wait for your checked wheelchair.'' Not, ''I completely understand how you feel, I had to wait forever at a supermarket check-out yesterday.''

• *Focus on the person, not the disability.* The emphasis is on the person first, not the disability.

• *Keep the passenger informed.* When providing an accommodation to a passenger with a disability, keep the passenger updated about the progress or timing in connection with such accommodation.

• *Knowledge is useful.* Be aware of the services, information, and resources available to a person with a disability who asks about a particular accommodation. If you don't know the answer to the question, treat the individual with respect and courtesy and say, ''Let me find out for you.'' Don't make guesses about what accommodations or services to provide a person with a disability. When explaining requirements under the law to a passenger with a disability, avoid rendering legal advice or counseling the person in any way.

• *The passenger is the expert.* Offer assistance only if the passenger appears to need help. If the passenger asks for help, ask how you can assist and listen to the passenger's response and instructions before you act. If you have any doubts as to how to assist a passenger with a disability, you should ask the passenger for guidance before acting. Avoid being overly enthusiastic about helping and always think before you speak and act when offering assistance.

• *Respect personal space.* Be sensitive about physical contact. Avoid patting an individual with a disability or touching the individual's wheelchair or cane. People with disabilities consider their assistive devices to be part of their personal space.

• *Speak directly to the passenger.* Always make eye contact and speak directly to a person with a disability, not the person's companion, attendant, or interpreter.

• *Treat each passenger as an individual.* It is important to recognize that people with disabilities may vary in their ability to perform certain tasks. Individuals with a disability are best able to assess and gauge what they can and cannot do in a particular situation.

It is always important to keep the above tips in mind when assisting and communicating with passengers with disabilities. As a practical matter though, you will need to be aware of different considerations depending on the type of disability the passenger self-identifies as having.

Below are five basic types of disabilities with a list of considerations to keep in mind when you are communicating with and accommodating passengers with each type of disability. Even though these five types of disabilities are set forth here, each passenger with a disability should be considered as an individual with individual needs. It is important for you to communicate with each passenger about that particular passenger's needs under the circumstances and to avoid making assumptions about the passenger's needs. The five basic types of disabilities addressed below are: People who are blind or visually-impaired; people who are deaf, hard of hearing, or deaf-blind; people with mobility disabilities; people who have difficulty speaking, and people with disabilities that are not apparent (*e.g.*, a cognitive or emotional disability, diabetes, etc.).

Tips for Assisting People Who Are Blind or Visually-Impaired

Communication

• Only offer assistance if it seems appropriate. Ask the person if you can be of assistance and, if so, how you can help.

• Identify yourself by name and job responsibility first.

• Always communicate using words rather than relying on gestures, facial expressions, or other nonverbal communication. For example, tell the passenger the gate number and the directions to get to the gate. If you are handing a boarding pass to a blind passenger, explain that you have the person's boarding pass and that you would like to place it directly in the person's hand. Always communicate in words what you are doing, *e.g.*, waiting to receive confirmation of a reservation, and identify any items you are giving to the passenger, *e.g.*, a credit card, tickets, voucher, etc.

• Make sure a passenger who is blind is made aware of all relevant information as it becomes available to all passengers. For example, if a boarding time is changed and the new boarding time is posted visually at the gate, you must inform the person orally. Advise the passenger when you are leaving the area and answer any questions the person has before you do.

• If individual safety briefings are required, conduct them discreetly with respect for the privacy of the person who is blind or visually-impaired.

• If a person uses a term relating to the condition of being blind or visually-impaired that you are not familiar with or that you don't understand, ask the person to tell you what his or her needs are. If you need additional information, you should contact the CRO to discuss how best to proceed. In addition, be aware that your carrier may provide additional training to educate you about the different types of disabilities in order to enhance your ability to accommodate passengers with disabilities.

• Keep in mind that the special service request (SSR) field of the passenger name record (PNR) may contain information concerning a passenger who is blind or visually impaired.

Guiding a Person

• Never take the arm of a person who is blind without asking first, because the person could lose balance. In addition, if you don't ask first, the person who is blind could perceive a lack of respect because he or she was not given the option of receiving the assistance. Once you ask if you can offer your arm, let the person who is blind take it. You may direct the person's arm to a railing or the back of a chair to assist with seating.

• Walk approximately a half step ahead of the person if you are serving as a guide through the terminal. When encountering stairs, escalators, moving walkways, revolving doors, etc., give the person who is blind the option to choose whether to use the facility or conveyance. For example, you might

say, ''We can just keep walking or use the moving sidewalk. Which would you prefer?'' Never assume that a person who is blind cannot use these devices because of blindness. Instead, offer the individual the freedom and flexibility to choose which devices and facilities he or she would like to use. Describe the environment in detail as you go and ask the person if he or she would like you to point out airport amenities such as restaurants, shops, ATM machines, restrooms, airline club lounges, displays, or other terminal facilities. Note any obstacles and their location in your path. If you need to provide a warning, be as specific as possible. Offer to orient the person to the gate or other terminal area in case he or she would like to walk around, *e.g.*, you could say, ''All even numbered gates are on our right when walking from security and odd numbered gates are on the left.''

• When you are done guiding the person to his or her destination, ask him or her if any other assistance is needed. Only if the person who is blind has requested should you inform other passengers or carrier personnel of the individual's need for additional assistance.

• Be aware that many people who are blind prefer to walk rather than use wheelchairs, electric carts, etc. You may not require a person who is blind to use a wheelchair and, if requested, you must provide a walking guide for the person who is blind.

Service Animals and Assistive Devices

• Never pet or distract a service animal accompanying a person who has a disability. Don't separate passengers who are blind from their service animals.

• Don't move a person's cane or assistive device if the person has placed it on the ground near a seat. If you ask and receive permission, you may help the passenger collect things if need be, *e.g.*, carry-on items, jackets.

Tips for Assisting People Who Are Deaf, Hard of Hearing, or Deaf-Blind

Communication

• Remember that people who are deaf, hard of hearing, or deaf-blind have various ways of communicating, *e.g.*, sign language, speech/lip reading, TTY, hearing aid or implant. A person's deafness can go unnoticed unless the person self-identifies as a person who is deaf, hard of hearing, or deaf-blind.

• When speaking, look directly at the person who is deaf or hard of hearing. The person may use speech/lip reading as a method of communicating. Use normal lip movement. Use a normal tone of voice when speaking to a person who is deaf or hard of hearing. Don't shout because shouting distorts the sound, words, and lip movement. Sometimes you may need to rephrase your message because many words have the same lip movement, *e.g.*, 15 and 50 have the same lip movement. If writing a note, make the message short and simple.

• Identify yourself by name and job responsibility first.

• If individual safety briefings are required, conduct them discreetly with respect for the privacy of the person who is deaf, hard of hearing, or deaf-blind.

• Make sure a passenger who is deaf, hard of hearing, or deaf-blind receives all relevant information as it becomes available to all passengers. For example, if a boarding time is changed and the new boarding time is announced, you must inform the person through an accessible method of communicating.

• If a person uses a term relating to the condition of being deaf, hard of hearing, or deaf-blind that you are not familiar with or that you don't understand, ask the person to tell you what his or her needs are. If you need additional information, you should contact the CRO to discuss how best to proceed.

• A deaf-blind person may communicate through the printing on palm method, an alternative to using sign language. This method involves ''writing'' with your fingertip on the palm of the deaf-blind person's hand. Use the fleshy part of your fingertip, not your nail. Always use all upper case letters and use the same reference point for each letter. More specifically, hold the deaf-blind person's hand the same way each time, so the top and bottom letter falls in the same place. Make sure the words you print are ''right side up'' for the person receiving the message. Write as large as possible and start in the upper left for a ''W'' and finish in the upper right. Use the entire palm area for each letter. Use one stroke for both the letter ''I'' and the number ''1''. The difference will be obvious from the context of what you are spelling. When you finish a word, ''wipe it off'' using the palm of your hand. This action indicates that you have finished one word and you are beginning a new word.

• Keep in mind that the special service request (SSR) field of the passenger name record (PNR) may contain information concerning a passenger who is deaf, hard of hearing, or deaf-blind.

Guiding a Person Who Is Deaf-Blind

• Touch the person gently and offer your arm. Let the person take your upper arm near your body; this way he or she can feel the change in gait as you approach different barriers and prepare for them. Don't take or grab the arm of the person who is deaf-blind (particularly the arm with which the person is holding a cane or guide dog harness) and don't push him or her along. If the person has a guide dog, go to the side opposite the service animal and offer your arm (usually the person's right side). Remember the person who is deaf-blind cannot hear you. Therefore, information regarding obstacles, stairs, etc. must be given tactually. Deaf-blind people often have poor balance so it is helpful to offer a steady hand to aid in orientation. Never leave a deaf-blind person in an open space, place his or her hand on a wall, post, railing, or whatever is available.

Service Animals

• Never pet or distract a service animal accompanying a person who has a disability. Don't separate passengers who are deaf, hard of hearing, or deaf-blind from their service animals.

Tips for Assisting People Who Have Mobility Disabilities

Communication

• If a person uses a term to describe a mobility disability that you are not familiar with or that you don't understand, ask the person to tell you what his or her needs are. If you need additional information, you should contact the CRO to discuss how best to proceed.

• If individual safety briefings are required, conduct them discreetly with respect for the privacy of the person with a mobility disability.

• When having a long conversation with a person who is using a wheelchair, stoop down or sit nearby so that you are closer to eye level.

Wheelchairs and Other Assistive Devices

• Be aware of the types of wheelchairs and assistive devices used by people with mobility disabilities when traveling. You must be able to provide information to people about the different types of wheelchairs, services, and other equipment provided or accommodated by your carrier on the particular flight.

• Understand the proper function and storage of the different types of wheelchairs and assistive devices. Ask the person with the mobility disability the best way to handle the device.

• Consider keeping information handy about businesses providing wheelchair repair in the area in case a person with a mobility disability needs the information.

Assisting With Transfers and Movement Through Terminal

• If you must transfer a person with a mobility disability from an aisle chair to a seat on the aircraft, or perform any other kind of transfer, explain the transfer procedures and listen to any instructions or preferences from the person before undertaking the transfer.

• Be aware that, under the law, you can never physically hand-carry a person with a mobility disability (even if both of you are willing) except in an emergency evacuation situation.

• When providing transportation between gates, ask the person with the mobility disability if the person would prefer to be pushed or not. If the answer is yes, use elevators and avoid escalators and moving walkways. When maneuvering through the terminal, say, ''Excuse us.'' Not, ''Excuse me.''

• Be aware that, under the law, carriers are not permitted to charge passengers with disabilities for services or equipment required by part 382. If, however, a passenger with a disability voluntarily offers to tip you for providing a service, you should consult your carrier's policy to determine whether you can accept it.

Service Animals

• Never pet or distract a service animal accompanying a person who has a mobility disability. Don't separate passengers with a mobility disability from their service animals.

Tips for Assisting People Who Have Difficulty Speaking

Communication

• Ask the person how he or she prefers to communicate.

• A pencil and paper may be okay for short conversations.

• If you do not understand something that is said, tell the person you don't understand and ask the person to repeat.

• Be patient, it may take a while to communicate.

• Let the individual speak without attempting to finish his or her sentence.

• To obtain information quickly, ask short questions that require brief ''yes'' or ''no'' answers.

• Don't shout.

• Difficulty speaking does not indicate a lack of intelligence.

Tips for Assisting People Who Have Disabilities That Are Not Apparent

Communication

• Do not make assumptions about the needs of people if their behavior appears to be unusual to you. Cognitive disabilities may cause people to reason, draw conclusions, or respond more slowly. People with cognitive disabilities may appear easily distracted. Depending upon the disability, the person may understand materials in written form or through a verbal explanation. They may also find the background noise of a busy airport terminal extremely distracting.

• Disregard any speech impairments or physical tics by being patient and aware of your own body language and facial expressions that could convey your own discomfort.

• If individual safety briefings are required, conduct them discreetly with respect for the privacy of the person with a disability that is not apparent. Similarly, if there is a concern that the person is not medically stable enough for air travel, conduct the inquiry in a discreet manner and involve the CRO, if necessary.

• If a person with a disability that is not apparent uses a term to describe a disability that you are not familiar with or that you don't understand, ask the person to tell you what his or her needs are. If you need additional information, you should contact the CRO to discuss how best to proceed.

Service and Emotional Support Animals

• Be aware that people who have disabilities that are not apparent may travel with emotional support animals or other service animals. Never pet or distract a service animal accompanying a person who has a disability that is not apparent. Don't separate passengers from their service or emotional support animals.

Indices

[Final guidance document will include an Alphabetical Index and a Part 382 Index]

Appendix I—Tips for Air Travelers With Disabilities

Tips for Air Travelers With Disabilities

There are some commonly used accommodations, facilities, and services that carriers are required to make available to passengers with disabilities. Appendix I sets forth a list of tips or general guidelines for air travelers with disabilities to keep in mind that relate to these commonly used accommodations, facilities, and services. Therefore, the ''you'' referred to herein is an air traveler with a disability or air travelers with disabilities. Below are some specific tips.

Ask Questions and Provide Instructions

Know what to ask carrier personnel. You can ask for and carrier personnel must be able to provide information about aircraft accessibility, seating and movable armrests, lavatory accessibility, boarding options, and storage facilities on board, among other things.

Although advance notice is not generally required, understand that providing detailed information about the accommodations you need in advance of travel will assist carrier personnel in providing those accommodations in a correct and timely manner.

If you are transferring planes, you may want to investigate whether your trip involves more than one carrier. If so, contact each carrier to determine whether it is able to fully accommodate you. Keep in mind that carriers might provide such optional accommodations on their ''mainline'' flights only, not on the flights operated by their smaller code-share affiliates. For example, some carriers do not provide medical oxygen on board. Don't assume that by communicating with the carrier for the first leg of your trip, other carriers handling the rest of the journey are fully briefed and able to accommodate you. Similarly, when booking reservations online, you may want to consider contacting each carrier by telephone to determine the carrier's individual policies and to provide and receive specific information to ensure your needs are met for each leg of your journey.

If you are receiving assistance with transportation between gates by ground wheelchair, remember to instruct the personnel assisting you on your specific needs, *e.g.*, whether or not you would like the airline employee or contractor to push you and the ground wheelchair through the terminal. Although in most instances you are not obligated to self identify as a passenger with a disability, keep in mind that conveying certain information or providing some guidance will permit carrier personnel to assist you better.

Directing carrier personnel to remove footrests (if possible) and other removable parts of personal wheelchairs and stow them in the cabin may help to reduce the potential for damage to the wheelchair while it is stowed in the cabin or in the cargo hold.

Boarding Assistance

When communicating to carrier personnel about your need for boarding assistance, be as specific as possible about the type or level of boarding assistance you require. More specifically, if, for example, you are completely immobile, ask carrier personnel to provide a wheelchair to transport you to and from the gate, a lift (if necessary), and assistance transferring from an aisle chair to a seat. If, for example, you are able to walk short distances, but cannot ascend and descend steps, ask carrier personnel to provide a wheelchair for longer distances to and from the aircraft and a lift (if necessary). If, for example, you can ascend and descend stairs and can walk shorter distances but

have difficulty walking longer distances, ask carrier personnel to provide a wheelchair or electric cart for longer distances to and from the aircraft.

Carrier personnel are not permitted to physically hand-carry a passenger with a disability on or off a plane, except in the case of an emergency evacuation. Keep in mind that if none of the options for boarding a particular flight is acceptable to you, you may have to wait for another flight or alter your travel plans.

Carrying Assistive Devices and Keeping Them Near You

Carrying medicine or other assistive devices like syringes as a carry-on item that you may need in the case of a flight cancellation or a missed flight may be a good idea. At times, passengers get separated unexpectedly from checked baggage. If you do decide to carry medication or other assistive devices with you on board, the items cannot be counted towards your carry-on baggage limit.

You are entitled to keep your assistive device near you on board as long as it does not interfere with safety requirements.

Carry Information and Useful Documentation

Bringing photocopies of instructions about the assembly and disassembly of wheelchairs and other assistive devices when you access air transportation may be a good idea. You can provide that information to carrier personnel storing or checking your wheelchair or assistive device. Attaching a laminated set of brief instructions to a wheelchair itself may also be a good idea in the event that your wheelchair is disassembled or reassembled in a secure area to which you do not have access.

Bringing photocopies of receipts, warranties, or other product information concerning a wheelchair or assistive device may be useful if the item is lost or damaged in transit. It might help with locating a repair option or processing a claim for liability against the carrier responsible for the loss or damage.

Complaints

Be aware that a Complaint Resolution Official (CRO) must be made available to you if you ask to speak with a manager or supervisor about a disability-related complaint. A CRO may be made available in person or by telephone. Passengers who are deaf or hard of hearing must be permitted to communicate with a CRO via a TTY on request.

If you make a written complaint, you should state whether a CRO was contacted when the matter arose and, if so, include the name of the CRO and the date of the contact, if available, and any written response received from the CRO.

Familiarize Yourself With the Law

Knowledge of the Air Carrier Access Act (ACAA) and its implementing regulations (14 CFR part 382) will permit you to be able to ask the right questions and share the most useful information with carriers. Some passengers with disabilities bring a copy of the regulations with them when they access air transportation in order to have the primary resource close at hand. Carriers must maintain a copy of the regulations at each airport they use. Therefore, if you are at an airport and have a question about the regulations, you may ask to review them and the carrier must provide them.

Individual Safety Briefings

You may receive an individual safety briefing under certain circumstances. If so, you should be provided an accessible safety briefing and it must be performed in a discreet manner. Keep in mind that you may need to provide information to carrier personnel to ensure that the individual safety briefing is accessible to you.

Limitations on Accommodations

Carrier personnel are expressly prohibited from performing certain tasks. For example, carrier personnel cannot physically hand-carry you on or off an airplane except in an emergency evacuation. In addition, while on board, carrier personnel are not required to administer medication to you, feed you, or accompany you into the lavatory to assist you.

Pre-Boarding as an Option

Although you are not required to pre-board, choosing to take advantage of a pre-boarding opportunity may assist you in securing a seating accommodation when a carrier does not provide advance seat assignments. In this situation, as a passenger with a disability, you may choose to pre-board before all other passengers. You can select a seat that best meets your needs if you have taken advantage of the opportunity to pre-board.

Pre-boarding may also permit you to secure the allotted stowage for your wheelchair or assistive device or it may permit easier access to overhead compartments if you are stowing your assistive device or parts of your wheelchair onboard.

Safety Always Considered

You should keep in mind that carriers are obligated to take the safety of all passengers into consideration when making decisions about accommodations for passengers with disabilities. At times, safety requires placing certain limitations on accommodations, *e.g.*, a service animal cannot block the aisle or an exit.

Seating Assignments

When requesting a particular seat assignment, it is useful to be as specific as possible about the type of seat that will meet your needs as a passenger with a disability. For example, instead of merely asking for an ''accessible'' seat, it is more helpful to provide some details about your specific needs, *e.g.*, ask for a bulkhead seat or an aisle seat with a movable armrest. This way, carrier personnel can determine the most appropriate seating accommodation for you.

Service Animals

It is not required under the law to provide advance notice if you are traveling with a service animal. However, in order to guarantee your seat assignment, you should be aware that, depending on whether the carrier provides advance seat assignments and the type of seating method it uses, it may have a policy requiring passengers with a disability (i) to request a particular seat assignment 24 hours in advance of the departure of the flight or (ii) to check in at least an hour before the departure of the flight. Carriers are obligated to make a good faith effort to accommodate you and your service animal regardless of whether you comply with the carrier's advance seat assignment policy and/or advance check-in requirement. Keep in mind that requesting your seat assignment well in advance of the flight may permit you to secure the specific seat assignment you would like with the least amount of waiting, inconvenience, or hassle to you.

Resources for Air Travelers with Disabilities

DOT Web Site

DOT posts useful information for all consumers, including air travelers with disabilities, on its Web site at *http://airconsumer.ost.dot.gov*. Click on ''Travel Tips and Publications.'' The following publications are useful for air travelers with disabilities: Plane Talk—Passengers with Disabilities, Fly Rights, and New Horizons: Information for the Air Traveller with a Disability.

Air travelers with disabilities can also access recent DOT enforcement orders to review DOT determinations involving the ACAA and Part 382 by going to *http://www.dot.gov* and clicking on ''Dockets and Regulations.'' See Appendix III for additional instructions for searching this data base of DOT enforcement orders and for a chart listing those enforcement orders related to the ACAA.

DOT Hotline

The toll free telephone hotline system that provides general information about the rights of air travelers with disabilities, responds to requests for information, and assists air travelers with time-sensitive disability-related issues. Members of the public may call 1–800–778–4838 (voice) or 1–800–455–9880 (TTY) from 7 a.m. to 11 p.m. eastern time, seven days a week, to receive assistance regarding air travel by individuals with disabilities.

Carriers' Web Pages and Reservations Personnel

Always check these resources when seeking information about services and equipment when accessing air transportation.

Appendix II—Airline Management-Related Issues

Airline Management-Related Issues

Appendix II highlights provisions of the ACAA and the accompanying regulations outlining specific responsibilities of management of carriers, *i.e.*, requirements to be implemented by management employees as opposed to personnel who deal with the traveling public, including passengers with a disability. In places, these are overlapping responsibilities and cross-references will be made to specific sections of this manual.

Discrimination Is Prohibited

Management of carriers are required to ensure that the carrier (either directly or

indirectly through its contractual, licensing, or other arrangements for provision of air transportation) does not discriminate against qualified individuals with a disability by reason of such disability. [Sec. 382.7(a)(1)] In addition, management of carriers should be aware that they are responsible for compliance with the ACAA and part 382 not only by their own employees, but also by employees of any company or entity performing functions on behalf of the carrier.

More specifically, carriers cannot require a passenger with a disability to accept special services, *e.g.*, pre-boarding, not requested by the passenger. [Sec. 382.7(a)(2)] Carriers cannot exclude a qualified individual with a disability from or deny that individual the benefit of air transportation or related services that are available to other individuals, even if there are separate or different services available for passengers with a disability, except as provided by the ACAA and part 382. [Sec. 382.7(a)(3)] Carriers cannot take actions adverse to passengers with a disability if they assert their rights under the ACAA and part 382. [Sec. 382.7(a)(4)]

Carriers cannot limit the number of passengers with a disability on a given flight. [Sec. 382.31(c)] Carriers must modify policies, practices, and facilities as necessary to ensure nondiscrimination consistent with the standards of Section 504 of the Rehabilitation Act, as amended. Carriers are not required to make modifications that would constitute an undue burden or would fundamentally alter their program. [Sec. 382.7(c)]

Refusal of Transportation

Carriers cannot refuse transportation to a qualified individual with a disability solely because the person's disability results in appearance or involuntary behavior that may offend, annoy, or inconvenience others. [Sec. 382.31(b)] Carriers must not refuse to provide transportation to a passenger with a disability on the basis of his or her disability unless it is expressly permitted by the ACAA and part 382. [Sec. 382.31(a)]

Safety Considerations

The ACAA does not require air carriers to disregard applicable FAA safety regulations. [Sec. 382.3(d)]

Carriers may refuse to provide transportation to any passenger on the basis of safety and if carriage would violate FAA regulations. However, when carriers exercise this authority, they must not discriminate against a passenger with a disability on the basis of disability. [Sec. 382.31(d)]

Written Explanation for Refusal of Transportation

When a carrier refuses to provide transportation to a passenger on a basis relating to disability, the carrier must specify in writing to the passenger the basis for the determination within 10 days of the refusal of transportation. [Sec. 382.31(e)] In the situation where refusal of transportation is based on safety concerns, the written notice must include the carrier's reasonable and specific basis for its opinion that transporting the passenger would be inimical to the safety of the flight.

No Charge for Accommodating Passengers With a Disability

Carriers cannot impose charges for providing facilities, equipment, or services that are required by the ACAA and its accompanying regulations for passengers with a disability. [Sec. 382.57]

Indirect Air Carriers

If an indirect air carrier provides facilities or services for passengers that are covered for other carriers by Sections 382.21 through 382.55, the indirect air carrier must do so in a manner consistent with those regulations. [Sec. 382.7(b)]

Contractors and Travel Agents

Carriers must receive assurances from their contractors who provide services, including travel agents (except non-U.S. citizens providing services outside the U.S.), that they will not discriminate on the basis of disability when providing such services and include a clause with that assurance in their contracts. [Sec. 382.9(a)] Similarly, their contracts must contain a clause stating that contractor employees will comply with directives issued by CRO's. [Sec. 382.9(b)]

Accessibility of Airport Facilities

All terminal facilities and services owned, leased, or operated by a carrier at a commercial service airport, including parking and ground transportation, must comply with the Standards for Accessible Design under the Americans with Disabilities Act. [Sec. 382.23(e)] See also 49 CFR part 37, Appendix A. Carriers must ensure that these terminal facilities and services are accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.[1] [Sec. 382.23(b)] For example, carriers must ensure that there is an accessible path between the gate and the boarding area. [Sec. 382.23(c)]

Contracts or leases between carriers and airport operators concerning the use of airport facilities must set forth the respective responsibilities of the parties for the provision of accessible facilities and services to individuals with disabilities as required by law. [Sec. 382.23(f)]

Carriers must not (i) restrict the movements of individuals with disabilities in terminals; (ii) require them to remain in a holding area or other location in order to receive assistance; or (iii) mandate separate treatment for individuals with disabilities except as required or permitted under part 382. [Sec. 382.55(c)]

Advance Notice and Reservation System

Carriers' reservation and other administrative systems must ensure that when advance notice is provided by a passenger with a disability as provided by the ACAA and its implementing regulations (see Ch. 3, Section A), the notice is recorded and properly transmitted to operating employees responsible for providing the accommodation about which notice was provided. [Sec. 382.33(d)]

Service Animals

Regardless of your carrier's policies with respect to pets, carriers are required by law to permit passengers with a disability to be accompanied by service animals in the cabin. [Sec. 382.55] See also Ch. 3, Section D and Appendix VI.

Aircraft Accessibility

When considering ordering, purchasing, or leasing aircraft, management of carriers should keep in mind that the following features are required for aircraft *ordered by* the carrier after April 5, 1990, or *delivered to* the carrier after April 5, 1992. In addition, different size airplanes must be equipped with different features according to the law. For example, aircraft with:

- 30 or more passenger seats must have movable aisle armrests on at least half of the aisle seats where it is feasible and it does not interfere with safety [Sec. 382.21(a)(i) and (ii)];
- 100 or more passenger seats must have priority storage space within the cabin to stow at least one passenger's folding wheelchair [Sec. 382.21(a)(2)] and DOT has interpreted that to mean a space at least 13 inches wide, 36 inches high, and 42 inches long;
- More than one aisle in which lavatories are provided must include at least one lavatory accessible to passengers with a disability accessing the lavatory with an on-board wheelchair [Sec. 382.21(a)(3)];
- More than 60 passenger seats having an accessible lavatory must be equipped with an on-board wheelchair [Sec. 382.21(a)(4)(i)]; and
- More than 60 passenger seats having an inaccessible lavatory must be equipped with an on-board wheelchair when a passenger with a disability informs the carrier (providing advance notice under Sec. 382.33(b)(8)) that he/she can use an inaccessible lavatory but cannot reach the lavatory from his or her seat without the use of an on-board wheelchair. [Sec. 382.21(a)(4)(ii)]

Requirements relating to retrofitting and replacing features to ensure accessibility as well as providing on-board wheelchairs are covered by other specific provisions. [Secs. 382.21(b) and (c)] However, any replacement or refurbishing of the aircraft cabin must not reduce existing accessibility to a level below that specified under the law. [Sec. 382.21(e)] Carriers must maintain aircraft accessibility features in proper working order. [Sec. 382.21(f)]

Seating Accommodations

Under certain circumstances, if a passenger self-identifies as a passenger with a disability, carriers must provide seating accommodations. [Sec. 382.38(a)] In order to provide these seating accommodations and other seat assignment requests from passengers with a disability, carriers may implement a reservation system to provide for advance seat assignments. If a carrier provides advance seat assignments, it may employ either the seat ''blocking'' method or

[1] Compliance with the requirements applying to places of public accommodation under Department of Justice (DOJ) regulations implementing Title III of the Americans with Disabilities Act (ADA) is sufficient for compliance under the ACAA and part 382 with respect to airport terminal facilities and services. [Sec. 382.23(b)].

the ''priority'' seating method. Each method requires some advance notice on the part of the passenger with a disability in order to guarantee the seating accommodation. [Secs. 382.38(b) and (c)]

Management of carriers should select an adequate reservation system to meet its needs, ensure proper administration of the reservation system, and provide employee training with respect to the reservation system and the requirements under the law for providing seating accommodations for passengers with disabilities.

If carriers do not employ a system for advance seat assignments, if a passenger with a disability self-identifies, the passenger must be allowed to pre-board the aircraft and select a seat to accommodate a disability. [Sec. 382.38(d)]

Carriers are not required to provide more than one seat per ticket or a seat in a class of service other than the one the passenger has purchased to accommodate a passenger with a disability in need of a seat assignment to accommodate his or her disability. [Sec. 382.38(i)]

Carriers must comply with all FAA safety requirements in responding to requests from individuals for seat assignment accommodations. [Sec. 382.38(j)]

Services and Equipment

Boarding Assistance in General

If a passenger with a disability requests assistance getting on an airplane or carrier personnel offer assistance and the passenger consents, a carrier must provide such assistance with boarding. [Sec. 382.39(a)] The type of assistance carriers must offer includes, as needed, services personnel and the use of wheelchairs, ramps, or mechanical lifts. [Sec. 382.39(a)(1)]

Carriers must provide access to the airplane for passengers with a disability by level-entry loading bridges or accessible passenger lounges where these means are available. [Sec. 382.39(a)(2)] Depending on the size of the aircraft, carriers have different obligations to provide boarding assistance to individuals with a disability using mechanical lifts, ramps, or other suitable devices that do not require lifting or carrying passengers up stairs. [Secs. 382.40 and 382.40a] See also Ch. 5, Section C.

Carriers must train to proficiency in the use of the boarding assistance equipment and procedures regarding the safety and dignity of passengers receiving boarding assistance. [Secs. 382.40(d) and 382.40a(d)]

Storing Wheelchairs and Other Assistive Devices in the Cabin

Carriers must allow passengers with a disability using personal ventilators/respirators to bring their equipment, including non-spillable batteries, on board the aircraft as long as FAA safety regulations are met. [Sec. 382.41(b)] Carriers must permit passengers to stow their canes and other assistive devices in the cabin and close to their seats, consistent with FAA safety regulations concerning carry-on items. [Sec. 382.41(c)]

Carriers must not count assistive devices toward the limit on carry-on items when a passenger with a disability brings an assistive device on board the aircraft. [Sec. 382.41(d)] Wheelchairs and other assistive devices that cannot be stowed in the cabin must be stowed in the baggage compartment with priority over other cargo and baggage. [Sec. 382.41(f)(3)] In addition, because carriers cannot charge for facilities, equipment, or services required under the law to be provided to qualified individuals with a disability, no charge would be imposed if a wheelchair or assistive device exceeded the limit on checked baggage. [Sec. 382.57]

Carriers must permit the in-cabin storage of wheelchairs or components of wheelchairs, including folding, collapsible, or breakdown battery-powered wheelchairs. [Sec. 382.41(e)] In addition, aircraft with 100 or more passenger seats (ordered after April 5, 1990, or delivered after April 5, 1992) must have a priority space in the cabin designated for stowage of at least one passenger's folding wheelchair. [Sec. 382.21(a)(2)]

On-Board Wheelchairs

When required, on-board wheelchairs must be equipped with specific features and be designed to be compatible with the maneuvering space, aisle width, and seat height of the aircraft on which they are to be used, and to easily be pushed, pulled, and turned in the cabin environment by carrier personnel. [Sec. 382.21(a)(4)(iii)]

Wheelchairs Unable To Be Stowed in the Cabin as Carry-On

When a folding, collapsible, or break-down wheelchair cannot be stowed in the cabin as carry-on baggage, carriers must ensure the timely checking and return of the passenger's wheelchair or other assistive device as close as possible to the door of the aircraft. [Sec. 382.41(f)]

In order to ensure the timely return of a passenger's wheelchair or other assistive device, carriers must maintain a baggage storage system so that the wheelchair or other assistive device must be among the first items retrieved from the baggage compartment [Sec. 382.41(f)(2)] and it must be stowed in the baggage compartment with priority over other items and baggage. [Sec. 382.41(f)(3)]

Battery-Powered Wheelchairs

Carriers must accept a passenger's battery-powered wheelchair, including the battery, as checked baggage unless baggage compartment size and aircraft airworthiness considerations prohibit it. [Sec. 382.41(g)]

Carriers may require that a passenger with a disability wishing to have a battery-powered wheelchair transported on a flight (including in the cabin) check in for the flight one hour before the scheduled departure time. [Sec. 382.41(g)(1)]

If (i) the battery on the passenger's wheelchair has been labeled by the manufacturer as non-spillable or (ii) the battery-powered wheelchair with a spillable battery can be loaded, stored, secured, and unloaded in an upright position, carriers must not require the battery to be removed and separately packaged. Carrier personnel may remove and package separately any battery that appears to be damaged or leaking. [Sec. 382.41(g)(2)]

When it is necessary to detach a battery from a wheelchair, carriers must provide packaging for the battery and package the battery consistent with appropriate hazardous materials regulations. [Sec. 382.41(g)(3)]

Liability for Loss or Damage

On domestic flights, the baggage liability limits do not apply for liability for loss, damage, or delay concerning wheelchairs or other assistive devices. Instead, the criterion for calculating the compensation for lost, damaged, or destroyed wheelchairs or other assistive devices must be the original price of the device. [Sec. 382.43(b)] Carrier personnel must not require a passenger with a disability to sign a waiver of liability for damage to or loss of a wheelchair or other assistive device. [Sec. 382.43(c)] Carrier personnel may make notes about preexisting damage or conditions of wheelchairs or other assistive devices.

Individual Safety Briefings and Timely and Complete Access to Information

Carriers must ensure that, upon request, passengers with a disability, including those who are blind or visually impaired or deaf, hard of hearing, or deaf-blind, have timely access to information being provided to other passengers, including but not limited to, safety briefings [Secs. 382.45 and 382.47] and information concerning ticketing, flight delays, schedule changes, connections, flight check-in, gate assignments, the checking and claiming of luggage, and aircraft changes that will affect the travel of passengers with a disability. [Sec. 382.45(c)] See also Ch. 5, Section F. If the safety briefing is presented to passengers on video screens, carriers must ensure that the video presentation is accessible to passengers who are deaf or hard of hearing. [Sec. 382.47(b)]

Complaint Procedures

Carriers providing scheduled service must establish and implement a complaint resolution mechanism including designation of one or more complaints resolution officials (CRO's). [Sec. 382.65(a)] The carrier must make the CRO available during all times the carrier is operating at the airport. [Sec. 382.65(a)(1)] See also Ch. 6.

Certificated U.S. carriers and foreign carriers [2] operating to, from, and in the United States using at least one aircraft with more than 60 passenger seats, must record, categorize, and report written disability-related complaints received by carriers to DOT on an annual basis. [Secs. 382.70(b) and (c)] The first annual report for calendar year 2004 was required to be submitted to DOT by January 25, 2005. [Sec. 382.70(d)] In addition, carriers must use the form specified in Appendix A to part 382 when making the annual report to DOT. Carriers must develop a system for recording and collecting data regarding specific categories of written disability-related complaints that they receive according to the type of disability and the nature of the complaint. [Sec. 382.70(c)]

Employee Training

Management of carriers should be aware that proper training of carrier personnel is

[2] Foreign carriers are covered by this section only with respect to disability-related complaints associated with any flight segment originating or terminating in the United States. [Sec. 382.70(b)].

critical to compliance with the ACAA and Part 382.

Carriers operating aircraft with more than 19 passenger seats must provide training for all personnel who deal with the traveling public, as appropriate to the duties and responsibilities of each employee. [Sec. 382.61(a)]

Carriers must provide training to proficiency in the requirements of the ACAA and its implementing regulations and other DOT and FAA regulations affecting the provision of air transportation to passengers with a disability, including the proper and safe operation of any equipment used to accommodate passengers with a disability. [Sec. 382.61(a)(1)(i) and (ii)]

Carriers must also train employees who deal with the traveling public regarding awareness and appropriate responses to individuals with a disability, including individuals with physical, sensory, mental, and emotional disabilities, including how to distinguish among the differing abilities of individuals with a disability. [Sec. 382.61(a)(2)]

Carriers must consult with organizations representing persons with disabilities in developing their training programs and policies concerning which carrier personnel receive training. [Sec. 382.61(a)(3)]

Carriers must provide or require their contractors to provide training to contractors' employees who deal with the traveling public regarding providing air transportation to passengers with a disability.

Carrier Programs

Carriers operating aircraft with more than 19 passenger seats must establish and implement a written program for carrying out the requirements of the law. [Sec. 382.63(a)] The program must include: (i) A training schedule for training carrier personnel on compliance; and (ii) the carrier's policies and procedures for accommodating individuals with a disability consistent with the requirements under the law. [Sec. 382.63(b)] DOT has the authority to request and review such programs as appropriate. [Secs. 382.63(c) and (d)]

Security Screenings

Carriers must undertake any security screening of a passenger with a disability in the same manner as any other passenger. See Ch. 4, Section B. In the wake of the events of September 11, 2001, however, in most cases, TSA has taken over for carriers in the area of providing security screenings of passengers. Should carriers resume this responsibility or in cases where carriers still retain some involvement in the security screening process, this section would be applicable to carriers and contractors of carriers performing this function.

Appendix III—Frequently Asked Questions

Frequently Asked Questions

Question: What's the difference between the Air Carrier Access Act (ACAA) and the Americans with Disabilities Act (ADA)?

Answer: The ACAA, signed into law by then-President Reagan in 1986, prohibits discrimination by airlines against individuals with disabilities in commercial air transportation. The ADA, signed into law after the ACAA in 1990 by then-President Bush, prohibits discrimination against individuals with disabilities in employment, public accommodations, commercial facilities, telecommunications, and transportation other than by commercial airlines (*e.g.*, subway and bus systems). [Sec. 382.1]

Question: Do the ACAA and its implementing regulations (14 CFR part 382 or part 382) apply to both U.S. and foreign carriers?

Answer: When initially passed in 1986, the ACAA and Part 382 (subsequently issued in March 1990) applied only to U.S. carriers. However, on April 5, 2000, Congress extended the applicability of the ACAA to cover foreign carriers. At approximately the same time, DOT issued a notice to foreign carriers advising them that the Department intended to use the provisions of part 382, which by its terms does not impose requirements on foreign air carriers, as guidance in investigating any complaints it receives alleging noncompliance with the ACAA by foreign carriers. The only provision of part 382 that currently applies to foreign air carriers is Section 382.70(b), which expressly requires foreign carriers to record, categorize, and report written disability-related complaints associated with any flight segment originating or terminating in the U.S. to DOT on an annual basis. DOT will soon be issuing a revised part 382 that will apply to both U.S. and foreign carriers. [Sec. 382.3]

Question: Recently, I broke my leg and I'll be in a cast and walking with crutches for several weeks. Am I covered by the ACAA?

Answer: Yes. The ACAA and part 382 apply to individuals who have a physical or mental impairment that, on a permanent or temporary basis, substantially limits a major life activity. Since your temporary impairment limits the major life activity of walking, you are considered a qualified individual with a disability. Therefore, you are covered by the ACAA and part 382. [Sec. 382.5]

Question: Am I entitled to the services and accommodations required by part 382 if I'm a qualified individual with a disability but I'm not a passenger, but rather I am just going to the airport to meet a friend who is traveling?

Answer: Yes. Carriers are required, under appropriate circumstances, to provide the services and accommodations mandated by part 382, on request, to all qualified individuals with disabilities, whether or not such individuals are passengers or simply using the airport facility for other reasons (*e.g.,* meeting a friend, purchasing a ticket for a future flight, etc.)

Question: I understand that part 382 requires airlines to provide wheelchair enplaning assistance, on request. I need wheelchair assistance getting from the curb, at the entrance to the airport, to the airplane. Are carriers required to provide wheelchair service from the curb to the airplane or only from the ticket counter to the airplane?

Answer: Part 382 requires carriers to provide wheelchair enplaning help, on request, from the curb to the airplane on departure, and from the airplane back out to the curb upon arrival. However, carriers are not required to station employees at the curb to await the arrival of passengers with disabilities. Therefore, it is advisable to ask a friend or a cab driver to help in getting the attention of carrier personnel in the terminal to obtain the required assistance if the carrier does not have curb-side attendants. If requested, after your flight arrives at your destination, the carrier must also assist you in claiming your checked luggage before assisting you in a wheelchair to the curb. [Sec. 382.39]

Question: Are airlines allowed to charge for providing services to passengers with disabilities?

Answer: Airlines are not allowed to charge passengers for providing services or accommodations required by part 382, but may charge for optional services or accommodations. Examples of required services for which carriers may not charge are assistance with enplaning, deplaning, and making flight connections, and the carriage of assistive devices (including the provision of hazardous materials packaging for wheelchair batteries, when appropriate). Examples of optional services for which carriers may charge are the provision of in-flight medical oxygen and stretcher service. [Sec. 382.57]

Question: I was flying a U.S. carrier from New York to California and they damaged my expensive battery-powered wheelchair. I purchased this wheelchair last year for $10,000. The repair cost was $3,000. Can the carrier limit the amount of money they pay me for this claim to $2,800, as they currently may for domestic baggage claims?

Answer: No. On claims involving damage to assistive devices on domestic flights, carriers may not invoke the liability limit applicable to baggage claims. The criterion for calculating the compensation for lost or damaged wheelchairs and other assistive devices is the original purchase price of the device. In this instance, the carrier should pay you or the repair company $3,000 provided that you can document the initial purchase price of the wheelchair and the cost of the repair. You may also be entitled to reimbursement for the cost of a loaner or rental wheelchair while yours is being repaired. [Sec. 382.43]

Question: I'm flying from Cleveland to Chicago on ABC Airlines and then connecting on XYZ Airlines on a flight from Chicago to Seattle. I need wheelchair assistance to reach my connecting gate. Which carrier is responsible for providing this wheelchair assistance to the connecting gate?

Answer: As the delivering carrier, ABC Airlines is required to provide you with the requested wheelchair assistance in reaching your connecting gate, at which point XYZ Airlines is then responsible for providing you with assistance in enplaning onto your connecting flight. The delivering carrier must assist you in reaching your connecting gate even if you are traveling on two separate tickets and the connecting flight is departing from a different terminal within the same airport. However, you should make the need

for such assistance clear to ABC Airlines before the flight, if possible. [Sec. 382.39]

Question: On aircraft that must have a priority stowage space in the cabin for my personal folding wheelchair, do I still get priority stowage for my folding wheelchair if the pilot happens to have his personal belongings in that space when I pre-board?

Answer: Yes. Your personal folding wheelchair takes priority over the personal carry-on items of the pilot and crew. [Sec. 382.41(e)(2)]

Question: I fly with my service animal and normally ask for a bulkhead seat, as it provides a little bit more room for my service dog. On a recent flight, the carrier would not allow me to sit in the bulkhead row with my service animal because the bulkhead row was also an emergency exit row. Was the carrier correct in asking me to take a seat other than a bulkhead seat in the emergency exit row?

Answer: Yes. The carrier was within its rights to refuse to permit you to sit in the bulkhead seat with your service animal, because the service animal may have blocked access to the emergency exit. Carriers must comply with all applicable FAA safety rules, even when attempting to accommodate the needs of passengers with disabilities. In such instances, the carrier should permit you and your service animal to move to another seat within the cabin that is not located in an emergency exit row that best accommodates your needs. [Sec. 382.37]

Question: Is obesity considered a disability under the ACAA and, if so, is an obese passenger entitled to two seats for the price of one if he or she needs more than one seat?

Answer: Obesity in and of itself is not necessarily a qualifying disability. However, obesity could be a qualifying disability if, for example, it substantially limits a major life activity, such as walking. If an obese passenger—whether the passenger is a qualified individual with a disability or not—occupies more than one seat, airlines may charge that passenger for the number of seats the passenger occupies. Also, there may be certain obese persons who are too heavy to be safely accommodated on certain aircraft, *e.g.*, because of safety limitations on seatbelts. [Secs. 382.5 and 382.38(i)]

Question: I require medical oxygen when I travel by air. Are airlines required to provide in-flight medical oxygen and, if so, may they charge passengers for providing medical oxygen?

Answer: Although many of the major U.S. carriers currently provide in-flight medical oxygen for a fee, part 382 does not require them to do so. Those carriers that choose to provide in-flight medical oxygen may charge passengers for this service, just as they may for other optional services, such as stretcher service. [Sec. 382.33]

Question: I'm a paraplegic and travel with my personal manual wheelchair. May airlines require me to travel with an attendant?

Answer: Airlines may not require a passenger with a mobility impairment to travel with an attendant if that passenger can physically assist in his or her evacuation. Since, in most instances, paraplegics have use of their arms and upper bodies, they can usually physically assist in their evacuation and generally should not be required to travel with an attendant. To the contrary, quadriplegics with no use of their arms or legs can be required to fly with an attendant. [Sec. 382.35]

Question: I'm deaf and want to make sure that I receive important information such as schedule changes, gate changes, etc. Do the airlines have to provide me with such information?

Answer: Yes. Part 382 requires carriers to provide passengers who are deaf or hard of hearing or who have vision impairments with timely access to the same information that they provide to other passengers in the airport terminal or on the aircraft. Persons who are unable to obtain this information from the audio or visual systems used by carriers may have to advise the carrier about the nature of their disability, at which point the carrier must ensure that such individuals receive the necessary information in an accessible manner. [Sec. 382.45]

Question: Can things other than wheelchairs or canes be assistive devices? What exactly does part 382 mean when it refers to assistive devices?

Answer: Assistive devices under part 382 are not limited to mobility devices such as wheelchairs, walkers, and canes. An assistive device can be any piece of equipment that assists passengers with a disability in carrying out a major life activity. Such devices are those devices or equipment used to assist a passenger with a disability in caring for himself or herself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, working, or performing other functions of daily life. Assistive devices may include medical devices and medications.

Question: How can I find out information on the number and types of disability-related complaints filed with DOT against specific airlines?

Answer: DOT's Aviation Consumer Protection Division publishes a monthly Air Travel Consumer Report (ATCR) which provides information on the number of disability-related complaints received each month by DOT. The ATCR can be accessed at *http://airconsumer.ost.dot.gov* In addition, an amendment to DOT's disability rule (part 382) that came into effect on August 7, 2003, requires U.S. and foreign airlines operating passenger-carrying flights to and from the United States with aircraft having a designed seating capacity of more than 60 seats to report annually to DOT on the number and type of written disability-related complaints that they receive. These individual carrier reports will contain summary information on the number of such complaints, the type of disability, and the nature of the complaint. The first such report, which covers written complaints received by the airlines during calendar year 2004, was due by January 25, 2005. DOT intends to provide a summary report to Congress, which will be available to the public. [Section 382.70]

Question: I travel with a service animal and ask for a bulkhead seat if one is available, as I find such a seat to be more comfortable for my service dog. How come some passengers with service animals avoid the bulkhead row?

Answer: It is DOT's understanding that some service animals are trained to curl up underneath a non-bulkhead row airline seat, whereas other service animals are more comfortable in the area between a bulkhead seat and the bulkhead wall itself. For this reason, when DOT amended part 382 to require seating accommodations for passengers traveling with service animals, it required carriers to provide either a seat in a bulkhead row or a seat other than a bulkhead seat, depending on the individual passenger's preference.

Question: Are airlines allowed to require all passengers who are both deaf and blind to travel with an attendant?

Answer: No. Airlines may not have a policy that requires all passengers who are both deaf and blind to travel with an attendant. However, if an individual passenger has both a hearing and vision impairment so severe that the individual cannot establish some means of communicating with airline personnel sufficiently to receive the preflight safety briefing (*e.g.*, using the ''printing on palm'' method of ''writing'' with your fingertip on the palm of the passenger's hand, or using a ''raised alphabet'' card to communicate), an airline could require that individual to travel with an attendant. DOT recognizes that in many situations carrier personnel may have difficulty communicating with a passenger who is deaf and blind. Such determinations must be made on a case-by-case basis using an individualized assessment of the passenger's specific capabilities.

Appendix IV—Recent Department of Transportation Enforcement Orders Related to the Air Carrier Access Act

Recent Department of Transportation Enforcement Orders Related to the Air Carrier Access Act

The following list of orders pertains to administrative enforcement actions conducted by or filed with the Aviation Enforcement and Proceedings (AEP) Office of the Department of Transportation (DOT). These administrative determinations by and large pertain to decisions resulting from enforcement actions against air carriers pursuant to the Air Carrier Access Act (ACAA), 49 U.S.C. 41705, and its implementing regulations, 14 CFR part 382, which prohibit discrimination by U.S. air carriers against qualified individuals with disabilities. These orders may be informative in assisting the reader to understand how the ACAA and its implementing regulation have been interpreted by DOT and applied in enforcement actions against air carriers.

The AEP Office's statutory jurisdiction spans a broad range of regulatory legal issues including civil rights and consumer protection, among others. The AEP issues many and varied types of orders within the scope of its authority. The orders listed in this appendix address only the most recent civil rights enforcement actions under the ACAA, going back to March, 2000 and are not meant to be a complete listing of all ACAA orders issued by the DOT through its AEP Office.

To access these orders, go to *http://www.dot.gov.* Click on ''Dockets and

Regulations,'' then ''Docket Management System,'' and then on ''Simple Search.'' Type in the last five digits of the docket number pertaining to the order that you are interested in. Using the date the order was issued and/or the order number, scroll through the docket index to identify the order you wish to review and click on the appropriate format in which you wish to retrieve the document.

Issues	Date of issue	Order No.	Docket No.
Failure to provide prompt and proper enplaning, connecting, and deplaning assistance primarily to passengers who have mobility impairments.	8/18/04	2004–8–19	OST–2004–16943
''Medically-prescribed marijuana''	5/27/04	2004–5–25	OST–2003–14808
Failure to provide a priority space to stow at least one passenger's folding wheelchair in the cabin.	4/30/04	2004–4–22	OST–2004–16943
Failure to provide a priority space to stow at least one passenger's folding wheelchair in the cabin.	3/9/04	2004–3–4	OST–2004–16493
Failure to provide prompt and proper enplaning, connecting, and deplaning assistance primarily to passengers who have mobility impairments.	12/5/03	2003–12–6	OST–2003–14194
Failure to provide a priority space to stow at least one passenger's folding wheelchair in the cabin.	11/13/03	2003–11–5	OST–2003–14194
Failure to provide prompt and proper enplaning, connecting, and deplaning assistance primarily to passengers who have mobility impairments.	11/10/03	2003–11–4	OST–2003–16507
Failure to provide a priority space to stow at least one passenger's folding wheelchair in the cabin.	10/8/03	2003–10–11	OST–2003–14194
Failure to provide adequate transport, enplaning, and deplaning assistance, wheelchair stowage and damage.	9/8/03	2003–9–4	OST–2003–14194
Failure to provide a priority space to stow at least one passenger's folding wheelchair in the cabin.	8/28/03	2003–8–30	OST–2003–14194
Failure to provide a priority space to stow at least one passenger's folding wheelchair in the cabin.	8/28/03	2003–8–29	OST–2003–14194
Failure to provide a priority space to stow at least one passenger's folding wheelchair in the cabin.	8/28/03	2003–8–28	OST–2003–14194
Prompt and proper enplaning and deplaning assistance	7/11/03	2003–7–12	OST–2003–14194
Prompt and proper enplaning and deplaning assistance	6/2/03	2003–6–3	OST–2001–10598
Prompt and proper enplaning and deplaning assistance	3/26/03	2003–3–19	OST–2003–14194
Prompt and proper enplaning and deplaning assistance	3/4/03	2003–3–1	OST–2003–14194
Special seating accommodations for tall people	3/19/02	2002–7–36	OST–2001–8991
Adequate wheelchair assistance and other required assistance	2/11/02	2002–3–15	OST–2002–10598
Refusal to transport a person with a disability	8/2/01	2001–8–17	OST–2001–19598
Sensitivity to tobacco smoke	3/12/01	2001–3–9	OST–2000–7891
In-cabin wheelchair stowage	2/7/2001	2001–2–6	OST–2000–7591
Refusal to transport a person with a disability	8/22/00	2000–8–18	OST–2000–19597
Prompt and proper enplaning and deplaning assistance; wheelchair stowage	3/27/00	2000–3–24	OST–99–6111

Appendix V

[Final guidance document will include the full text of 14 CFR Part 382]

Appendix VI

[Final guidance document will include the full text of the ''DOT Guidance Concerning Service Animals in Air Transportation]

[FR Doc. 05–7544 Filed 4–19–05; 8:45 am]

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Federal Register

Wednesday,
April 20, 2005

Part III

Securities and Exchange Commission

17 CFR Part 249

First-Time Application of International Financial Reporting Standards; Final Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 249

[Release Nos. 33–8567; 34–51535; International Series Release No. 1285; File No. S7–15–04]

RIN 3235–AI92

First-Time Application of International Financial Reporting Standards

AGENCY: Securities and Exchange Commission.

ACTION: Final amendment to form.

SUMMARY: The Commission is adopting amendments to Form 20–F to provide a one-time accommodation relating to financial statements prepared under International Financial Reporting Standards (''IFRS'') for foreign private issuers registered with the SEC. This accommodation applies to foreign private issuers that adopt IFRS prior to or for the first financial year starting on or after January 1, 2007.

The accommodation permits eligible foreign private issuers for their first year of reporting under IFRS to file two years rather than three years of statements of income, changes in shareholders' equity and cash flows prepared in accordance with IFRS, with appropriate related disclosure. The accommodation retains current requirements regarding the reconciliation of financial statement items to generally accepted accounting principles as used in the United States (''U.S. GAAP'').

In addition, the Commission is amending Form 20–F to require certain disclosures of all foreign private issuers that change their basis of accounting to IFRS.

DATES: *Effective Date:* May 20, 2005.

FOR FURTHER INFORMATION CONTACT: Michael D. Coco, Special Counsel, Office of International Corporate Finance, Division of Corporation Finance, at (202) 942–2990, U.S. Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0302, or Susan Koski-Grafer, Office of the Chief Accountant, at (202) 942–4400, U.S. Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–1103.

SUPPLEMENTARY INFORMATION: The Commission is amending Form 20–F [1] under the Securities Exchange Act of 1934 (the ''Exchange Act'').[2] Form 20–F is the combined registration statement and annual report form for foreign private issuers [3] under the Exchange Act. It also sets forth disclosure requirements for registration statements filed by foreign private issuers under the Securities Act of 1933 (the ''Securities Act'').[4] The Commission issued a proposing release relating to these amendments on March 11, 2004.[5]

I. Background

A. Increasing Use of International Financial Reporting Standards

Under the leadership of the International Accounting Standards Board (''IASB''), over recent years IFRS has become widely recognized by preparers and users of financial statements. As a result, numerous non-U.S. companies, including many that are registered with the SEC, are voluntarily choosing to switch from their home country accounting principles to IFRS. In addition, an increasing number of jurisdictions around the world are adopting or incorporating IFRS as their basis of accounting, as a result of which a large number of issuers registered with the SEC will switch to IFRS from their Previous GAAP.[6] For example, in June 2002, the European Union (''EU'') adopted a regulation requiring companies incorporated under the laws of one of its Member States and whose securities are publicly traded within the EU to prepare their consolidated financial statements for each financial year [7] starting on or after January 1, 2005 on the basis of accounting standards issued by the IASB.[8] In accordance with these requirements, listed EU companies not currently using IFRS must convert from the existing national accounting standards to IFRS, as endorsed by the European Union, no later than 2005.[9] Other countries, including Australia, also have adopted similar requirements by incorporating IFRS as or into their own standards for periods beginning after January 1, 2005.

Foreign private issuers that register securities with the SEC, and that report on a periodic basis thereafter under Section 13(a) or 15(d) of the Exchange Act,[10] are generally required to present, in their annual reports and registration statements filed with the SEC, audited statements of income, changes in shareholders' equity and cash flows for each of the past three financial years, prepared on a consistent basis of accounting.[11] These issuers also are generally required to present selected financial data covering each of the past five financial years.[12]

B. Proposed Amendments to Form 20–F

At the beginning of year 2003,[13] the IASB had not finalized some of the IFRS that many foreign private issuers will be

[1] 17 CFR 249.220f.

[2] 15 U.S.C. 78a *et seq.*

[3] The term ''foreign private issuer'' is defined in Exchange Act Rule 3b–4(c) [17 CFR 240.3b–4(c)]. A foreign private issuer is a non-government foreign issuer, except for a company that (1) has more than 50% of its outstanding voting securities owned by U.S. investors and (2) has either a majority of its officers and directors residing in or being citizens of the United States, a majority of its assets located in the United States, or its business principally administered in the United States.

[4] 15 U.S.C. 77a *et seq.*

[5] ''First-Time Application of International Financial Reporting Standards,'' Release No. 33–8397 (the ''Proposing Release'').

[6] This release and the adopted amendments use the term ''Previous GAAP'' to refer to the basis of accounting that a first-time adopter uses immediately before adopting IFRS. This usage is consistent with IFRS. See International Financial Reporting Standard 1: ''First-time Adoption of International Financial Reporting Standards,'' as issued in June 2003 (''IFRS 1''), Appendix A.

[7] Consistent with Form 20–F, IFRS and general usage outside the United States, this release uses the term ''financial year'' to refer to a fiscal year. See Instruction 2 to Item 3 of Form 20–F.

[8] Regulation (EC) No. 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards, Official Journal L. 243, 11/09/2002 P. 0001–0004 (the ''EU Regulation''). The Commission commends the EU, as well as Australia and other jurisdictions, for their efforts relating to IFRS. The Commission believes broad acceptance of all of IFRS, and of the IASB standard setting process, would serve to promote high quality, transparent and comparable reporting of financial results on a global basis.

[9] Under the EU Regulation, companies meeting certain criteria will be permitted an extension until 2007.

[10] 15 U.S.C. 78m(a) or 78o(d). Section 13(a) of the Exchange Act requires every issuer of a security registered pursuant to Section 12 of the Exchange Act [15 U.S.C. 78l] to file with the Commission such annual reports and other reports as the Commission may prescribe. Section 15(d) of the Exchange Act requires each issuer that has filed a registration statement that has become effective pursuant to the Securities Act to file such reports as may be required pursuant to Section 13 in respect of a security registered pursuant to Section 12, unless the duty to file under Section 15(d) has been suspended for any financial year.

[11] See Item 8.A.2 for Form 20–F. Foreign private issuers are also required to present audited balance sheets as of the end of the past two financial years.

[12] See Item 3.A.1 of Form 20–F.

[13] In several countries the presentation of financial statements in accordance with IFRS becomes mandatory for financial years starting on or after January 1, 2005. This release refers to that financial year as ''year 2005,'' regardless of the actual beginning date of a company's financial year, and the three prior financial years as ''year 2002,'' ''year 2003,'' and ''year 2004,'' respectively. Accordingly, the financial statements for those years are referred to as ''year 2002 financial statements,'' ''year 2003 financial statements,'' and ''year 2004 financial statements.'' For issuers adopting IFRS for the first time during another financial year, the earliest of the three years for which financial statements are presently required under Form 20–F is referred to as the ''third financial year,'' the second financial year as the ''second financial year,'' and the financial year in which an issuer switches to IFRS as the ''most recent financial year.''

required to apply retrospectively when they adopt IFRS for the first time for year 2005. The Commission recognized that compliance with SEC requirements could be difficult and burdensome for foreign issuers switching to IFRS, because these issuers would have to implement accounting standards that were not yet finalized during the reporting period to which they must be applied. In response to this concern, the Commission issued a proposal to amend Form 20–F to provide an accommodation to foreign private issuers that were switching to IFRS prior to 2007.[14] The proposals were intended to facilitate the transition of foreign companies to IFRS and to improve the quality of their financial disclosure. The proposed amendments to Form 20–F also required certain disclosures from foreign private issuers that change their basis of accounting to IFRS during any year. This disclosure relates to certain mandatory and elective accounting treatments that an issuer may use in applying IFRS for the first time and the reconciliation from Previous GAAP to IFRS required by IFRS.

C. Comments Received

In response to this proposal, the Commission received 33 comment letters from representatives of foreign issuers, accounting firms, professional associations, investor associations and regulators.[15] While all of the commenters supported reducing the burden on foreign issuers that change their basis of accounting to IFRS, most commenters addressed to varying degrees the questions raised in the Proposing Release and suggested modification to the amendments as proposed. The issues that generated the most discussion were the following:

- The proposed time frame during which the accommodation would be available to a first-time adopter of IFRS;
- The definition of ''first-time adopter'' for purposes of determining eligibility to rely on the accommodation;
- The need for an unqualified statement of compliance with IFRS by an issuer seeking to rely on the accommodation, particularly with regard to standards that had not been endorsed by the EU;
- The proposed inclusion of condensed U.S. GAAP information for three years;
- The need for guidance relating to disclosure under Industry Guide 3 or 6 from companies that rely on the proposed accommodation;
- The presentation of financial statements for interim periods during the Transition Year;[16] and
- The proposed disclosure about the use of exceptions to IFRS by a first-time adopter.

D. Summary of the Final Amendments to Form 20–F

The Commission is adopting a new General Instruction G to Form 20–F to allow an eligible foreign private issuer to omit from SEC filings for its first year of reporting under IFRS the earliest of the three years of financial statements. In response to many of the commenters' concerns, the amendments as adopted differ in some respects from the amendments as proposed. In this release the Commission is:

- Making the accommodation available to companies that adopt IFRS as their basis of accounting prior to or for the first financial year starting on or after January 1, 2007;
- Clarifying that, except as discussed in the next point, the accommodation is available only to a foreign private issuer that states unreservedly and explicitly that its financial statements comply with IFRS and are not subject to any qualification relating to the application of IFRS as issued by the IASB;
- Permitting the accommodation to be available to a foreign private issuer that prepares its financial statements in accordance with IFRS as adopted by the EU if the issuer provides an audited reconciliation to IFRS as published by the IASB;
- Not requiring condensed U.S. GAAP information from companies that rely on the accommodation;
- Clarifying that companies subject to Industry Guide 3 or 6 should provide Industry Guide Information under IFRS for periods covered by their IFRS financial statements, with U.S. GAAP or Previous GAAP information for earlier years;
- For purposes of complying with Item 8.A.5 of Form 20–F relating to interim period financial statements required to be included in registration statements and prospectuses during the Transition Year, permitting issuers to present IFRS financial statements covering interim periods, subject to certain conditions; and
- Clarifying that first-time adopters of IFRS need not provide quantified numerical information on the financial significance of any exceptions from IFRS on which they rely.

In many areas, the Commission is giving first-time adopters significant flexibility by not prescribing specific formats, disclosures, legends, or language to be used in the presentation of IFRS financial statements. For example, companies are permitted (but not required) to include Previous GAAP financial information or financial statements, and are permitted to determine the appropriate information content and presentation format for the Previous GAAP–IFRS reconciliation required under IFRS 1. The Commission believes a flexible approach is appropriate because of the large number of foreign private issuers from several countries that will be first-time adopters and the wide variety of circumstances these issuers will encounter in making the transition from Previous GAAP to IFRS. Issuers should assess the information needs of their shareholders and the investment community at large and should provide meaningful, reliable and transparent information in connection with their implementation of IFRS.

The Commission reminds issuers of their responsibilities under the federal securities laws to provide investors with information that is not misleading.[17] In addition, as with all disclosure and accounting matters involving companies that make filings under the Securities Act or the Exchange Act, the SEC staff may comment on such matters.

II. Discussion of the Amendments To Permit Omission of IFRS Financial Statements for the Third Financial Year

A. Eligibility Requirements

The Commission is adopting an amendment to Form 20–F to allow an eligible foreign private issuer for its first year of reporting under IFRS to file two years rather than three years of statements of income, shareholders' equity and cash flows prepared in accordance with IFRS.

- Annual Reports. A foreign private issuer is eligible to exclude IFRS financial statements for the third financial year from an Annual Report on Form 20–F if (1) the annual report relates to the first financial year starting on or after January 1, 2007 or an earlier financial year, (2) the issuer adopts IFRS for the first time by an explicit and unreserved statement of compliance

[14] See the Proposing Release.

[15] These comment letters are posted on the Commission's Web site at *http://www.sec.gov/rules/proposed/s71504.shtml.*

[16] The term ''Transition Year'' refers to the financial year in which an issuer first changes its basis of accounting from Previous GAAP to IFRS. For example, for foreign issuers with a calendar year-end that are subject to the EU Regulation, the Transition Year would be the financial year ended December 31, 2005.

[17] For example, this responsibility can be found under Sections 11 and 12(a)(2) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b–5 thereunder.

with IFRS,[18] and (3) the audited financial statements for the financial year to which the annual report relates are prepared in accordance with IFRS.

• Registration Statements. A foreign private issuer is eligible to exclude IFRS financial statements for the third financial year from a registration statement under the Securities Act or the Exchange Act if (1) the most recent audited financial statements required by Item 8.A.2 of Form 20–F are for the first financial year starting on or after January 1, 2007 or an earlier financial year, (2) the issuer adopts IFRS for the first time by an explicit and unreserved statement of compliance with IFRS, and (3) the audited financial statements for the most recent financial year are prepared in accordance with IFRS.

These adopted eligibility requirements differ from the proposed requirements, which would have permitted a foreign private issuer that is a first-time adopter of IFRS to omit IFRS financial statements for the third-year back from an annual report for a financial year that begins no later than January 1, 2007 or from a registration statement for which the most recent financial statements are for a financial year that begins no later than January 1, 2007.

Many commenters noted that under the amendments as proposed an issuer that was eligible to defer its adoption of IFRS until 2007 under the EU Regulation would not have been eligible to rely on the accommodation unless it had a financial calendar year-end.[19] They also commented that the proposed deadline would create difficulties for companies with a 52/53 week financial year, which may start later than January 1.

The accommodation as adopted has been broadened and is available to a foreign private issuer that adopts IFRS prior to or for its first financial year starting on or after January 1, 2007. This approach matches the extended compliance period under the EU Regulation. Under this approach, an issuer that, for example, has a September 30 financial year-end could switch to IFRS for its financial year from October 1, 2007 to September 30, 2008 and would be eligible to apply the accommodation when filing its Form 20–F Annual Report with the SEC by March 2009.[20]

Commenters also pointed out that an issuer that previously claimed compliance with IAS could be considered a first-time adopter under IFRS 1 if it did not include an explicit and unreserved statement of compliance with IFRS in its most recent published annual financial statements. For example, an issuer that had prepared financial statements under IAS in prior years and then in later years switched back to home country GAAP would be considered a first-time adopter under IFRS 1 but would not have been eligible for the accommodation as proposed.

The Commission has clarified that the accommodation as adopted is available to a foreign private issuer that is a ''first-time adopter.'' The adopted definition of first-time adopter in Form 20–F is consistent with that under IFRS 1. This approach is intended to avoid situations in which an issuer could be a first-time adopter under IFRS 1 but would be ineligible to rely on the accommodation because it had prepared its financial statements in accordance with IAS for an earlier financial year.

Commenters also expressed concern over the ability of issuers to make an unreserved and unqualified statement of compliance with IFRS if the EU had not fully endorsed all of the IFRS standards by the time the issuer produced its financial statements. This concern related both to the EU endorsement of existing standards as well as to the endorsement of any future standards that the IASB may adopt for companies that adopt IFRS in later years. Other commenters pointed out that Australia is adopting IFRS into Australian GAAP which, they asserted, would fully encompass IFRS. As a result, the financial statements of Australian companies would refer to compliance with Australian GAAP and not necessarily to IFRS.

As adopted, except as described in Section II.G for EU issuers, an issuer is eligible to rely on the accommodation only if it can state unreservedly and explicitly that its financial statements comply with IFRS as published by the IASB, and if its audited financial statements are not subject to any qualification, including qualification relating to the application of IFRS. In addition, the issuer's independent auditor would be required to opine without qualification on compliance with IFRS. A foreign private issuer that had not complied with all IFRS in effect as published by the IASB would not be able to make the required unreserved statement of compliance with IFRS and would not be eligible to rely on the accommodation the Commission has adopted.[21]

Some countries may adopt IFRS by incorporating them into their home country standards. Australia, for example, has taken this approach. For purposes of eligibility to rely on the accommodation, an Australian issuer would need to assert its compliance with both IFRS and Australian GAAP.[22]

Some commenters noted that the proposal did not address whether an issuer that has published audited IFRS financial statements for the third financial year should include them in its SEC filings. If an issuer has voluntarily published audited IFRS financial statements for the third financial year, or has been required to do so pursuant to other regulations, then the burdens associated with including those financial statements in SEC filings would appear low. In addition, the Commission believes investors should have access to those financial statements in SEC filings. As a result, the adopted amendments require that an issuer that has published audited IFRS financial statements for three years include all three years of IFRS financial statements in its SEC filings.

Some commenters recommended that, for the same reasons for which it applies to foreign private issuers that file securities documents under the Securities Act and Exchange Act, the accommodation should be extended to the financial statements of entities prepared under Rules 3–05, 3–09, 3–10, and 3–16 of Regulation S–X.[23] The Commission views the adopted amendments as applying to those

[18] Under IFRS 1, an entity is a ''first-time adopter'' if the entity's first IFRS financial statements are the first annual financial statements in which the entity adopts IFRS, by an explicit and unreserved statement in those financial statements of compliance with IFRS. IFRS 1, paragraph 3.

[19] Under the EU Regulation mandating the use of IFRS, EU Member States may allow companies to defer their adoption of IFRS until year 2007 if (1) a company is listed both in the EU and on a non-EU exchange and currently uses internationally accepted standards as its primary accounting standards, or (2) a company has only publicly traded debt securities.

[20] Annual reports on Form 20–F are due six months after the end of the financial year.

[21] The circumstances under which an audit report containing a disclaimer or qualification would be accepted are extremely limited. See Instruction to Item 8.A.3 of Form 20–F.

[22] In making this assertion, an Australian issuer may rely on the view that Australian GAAP complies with IFRS. This approach of relying on the home country standard setter's compliance with IFRS does not apply to an issuer from another country that adopts IFRS as its home country GAAP within the time frame to which the accommodation applies, although such an issuer could assert its compliance with its home country GAAP, as well as its compliance with IFRS, if appropriate.

[23] Rule 3–05 relates to financial statements of businesses acquired or to be acquired; Rule 3–09 relates to separate financial statements of non-consolidated subsidiaries and 50-percent or less owned persons; Rule 3–10 relates to financial statements of guarantors and issuers of guaranteed securities registered or being registered; and Rule 3–16 relates to the financial statements of affiliates whose securities collateralize an issue registered or being registered.

financial statements, provided that the entities meet the definition of foreign business in Rule 1.02(l) of Regulation S–X.[24] The Commission similarly views the amendments as applying to the financial statements of a target company in a business combination transaction included in a Securities Act registration statement on Form S–4 [25] or Form F–4 [26] or a proxy or information statement under the Exchange Act.[27]

B. Primary Financial Statements

1. IFRS Financial Statements

With respect to the consolidated financial statements and other financial information required by Item 8.A of Form 20–F, the Commission is adopting the amendments as proposed to allow eligible foreign private issuers for their first year of reporting under IFRS to present in their SEC filings during that year only two years of audited IFRS financial statements instead of three years. Eligible companies are permitted to omit audited financial statements for the earliest of the three years when providing the financial statements required by Item 8.A.2. All instructions to Item 8, including instructions requiring audits in accordance with U.S. generally accepted auditing standards will continue to apply.[28] Commenters did not raise concerns with these aspects of the amendments.

2. Condensed U.S. GAAP Financial Information

The Commission proposed amending Form 20–F to require companies that present two years of IFRS financial statements in their SEC filings also to present, as part of their U.S. GAAP reconciliation, audited condensed U.S. GAAP information for three years in a level of detail consistent with that required by Article 10 of Regulation S–X for interim financial statements. Under the amendments as adopted, issuers relying on the accommodation will not be required to provide this condensed U.S. GAAP information.

Commenters had diverging views on the proposal. Some commenters supported the proposal to require three years of condensed U.S. GAAP information in order to have three-year trend information that would be beneficial to investors without being unduly burdensome to issuers. Other commenters claimed that the cost and burden to issuers of preparing condensed U.S. GAAP information would outweigh the benefits to investors. One commenter noted that the preparation of condensed U.S. GAAP information would create an unnecessary burden to companies because investors would have available a reconciliation from Previous GAAP to U.S. GAAP and a reconciliation from IFRS to U.S. GAAP, which would allow them to sufficiently assess U.S. GAAP trend information on a three-year basis. After evaluating the benefits in relation to the expected costs, the Commission is not adopting the proposal to require the presentation of condensed U.S. GAAP information. Companies relying on the accommodation will continue to be required to provide an audited reconciliation to U.S. GAAP for the two years of financial statements prepared in accordance with IFRS.[29]

3. Previous GAAP Financial Statements

The Commission is adopting amendments that will allow but not require any issuer that switches to IFRS to include, incorporate by reference, or refer to Previous GAAP financial information. These amendments are adopted as proposed. Issuers that elect to include or incorporate by reference financial information prepared in accordance with Previous GAAP must include or incorporate narrative disclosure of its operating and financial review and prospects under Item 5 of Form 20–F for the reporting periods covered by Previous GAAP financial information.

The proposing release solicited comment on the presentation of Previous GAAP information. The amendments as adopted do not prescribe the specific placement of any Previous GAAP information, although the adopted amendments prohibit its presentation in a side-by-side columnar format with IFRS information. The Commission believes this will help to avoid potential confusion and inappropriate comparisons between the two.

An issuer that includes, incorporates by reference or refers to Previous GAAP selected financial data or financial information in an SEC disclosure document must also include appropriate cautionary language with respect to that data to avoid inappropriate comparison with information presented under IFRS. Issuers electing to include or incorporate Previous GAAP financial information must disclose, at an appropriate prominent location, that the filing contains financial information based on the issuer's Previous GAAP, which is not comparable to financial information based on IFRS. The amendments as adopted do not specify particular legends or language that should be used by issuers that include or incorporate Previous GAAP information. The Commission believes that appropriate language may vary depending on the use made of Previous GAAP information.

Commenters expressed wide support for the proposal to permit but not require Previous GAAP information, with appropriate labels and legends. There was more divergence on the issue of its format and location. The Commission believes a flexible approach is best suited to allowing an issuer to determine the format and placement of Previous GAAP information based on its use.

C. Selected Financial Data

The Commission is adopting the amendments as proposed to permit first-time adopters to provide, pursuant to Item 3.A of Form 20–F, selected financial data based on IFRS for the two most recent financial years. First-time adopters that present two years of IFRS selected financial data would continue to be required to provide five years of selected data based on U.S. GAAP, unless the instructions to Item 3.A permit the issuer to provide U.S. GAAP data for a shorter time.[30] The amendments neither require nor

[24] That rule defines a foreign business as a business that is majority owned by persons who are not citizens or residents of the United States and is not organized under the laws of the United States or any state thereof, and either (1) more than 50 percent of its assets are located outside the United States; or (2) the majority of its executive officers and directors are not United States citizens or residents.

[25] 17 CFR 239.13.

[26] 17 CFR 239.34.

[27] Under the Exchange Act, proxy statements are filed on Schedule 14A (17 CFR 240.14a–101) and information statements are filed on Schedule 14C (17 CFR 240.14c–101).

[28] Although the instructions to Item 8 continue to refer to U.S. generally accepted auditing standards (''GAAS''), the Commission notes that under the Sarbanes-Oxley Act of 2002, the Public Company Accounting Oversight Board (''PCAOB'') now has broad authority to set standards for audits of U.S. public companies. In Audit Committee Standard No. 1, the PCAOB directed auditors to cease referring to GAAS in audit reports relating to financial statements of issuers and instead to refer to the ''standards of the Public Company Accounting Oversight Board (United States).'' See ''Commission Guidance Regarding the Public Company Accounting Oversight Board's Auditing and Related Professional Practice Standard No. 1,'' Release No. 33–8422 (May 14, 2004).

[29] See Items 17(c) and 18 of Form 20–F.

[30] The instructions to Item 3.A of Form 20–F require a company to include selected financial data on a basis reconciled to U.S. GAAP for those periods for which the company was required to reconcile the primary annual financial statements in an SEC filing. Therefore, a foreign private issuer may be permitted to present fewer than five years of U.S. GAAP information under selected financial data in the years immediately after its initial SEC registration. This permits a company to build up a five-year history of U.S. GAAP information. This accommodation is not affected by these amendments.

prohibit inclusion, incorporation by reference or reference to selected financial data presented on the basis of Previous GAAP, although as with the audited financial statements, Previous GAAP information should not be presented in a side-by-side columnar format with IFRS information.[31]

The Commission did not receive extensive comment on the proposal as it relates to selected financial data. One commenter noted that the proposal did not appear to reflect the Commission practice of allowing an issuer to build up to a five-year presentation of selected financial data, and could appear to suggest that a full five years of IFRS selected financial data would be required in the years following an issuer's first time adoption of IFRS. The Commission notes the amendments do not affect the ability of an issuer to rely on the Instruction to Item 3.A. in years subsequent to becoming a first-time adopter of IFRS, thereby allowing that issuer to build up to a five-year history of selected financial data based on IFRS.

D. Operating and Financial Review and Prospects

The Commission is adopting as proposed an instruction in new General Instruction G to Form 20–F to clarify how issuers should present their disclosure under Item 5 of Form 20–F relating to operating and financial review and prospects. The adopted instruction specifies that in providing that disclosure, management should focus on the IFRS financial statements from the past two financial years, as well as the reconciliation to U.S. GAAP for the same two financial years. The discussion also should explain any differences between IFRS and U.S. GAAP that are not otherwise discussed in the reconciliation and that the issuer believes are necessary for an understanding of the financial statements as a whole.[32] Management should not include in this section any discussion relating to financial statements prepared in accordance with Previous GAAP.

E. Other Disclosures

1. Business and Derivatives Disclosure

The Commission is adopting as proposed an instruction in new General Instruction G to Form 20–F to clarify that for companies preparing their financial statements under IFRS, the reference to accounting principles in Item 4, ''Information on the Company,'' refers to IFRS and not to either Previous GAAP or U.S. GAAP.[33] The Commission is also adopting as proposed an instruction in General Instruction G to clarify that for companies preparing their financial statements under IFRS, derivatives and market risk disclosure provided in response to Item 11 would be based on IFRS.

Commenters widely concurred with the proposals to include instructions clarifying that both business operations disclosure pursuant to Item 4 and derivatives disclosure pursuant to Item 11 of Form 20–F should refer to the financial information prepared in accordance with IFRS.

2. Disclosure Pursuant to Industry Guides

The Commission did not propose, nor is it adopting, any specific amendments with respect to information to be disclosed pursuant to Industry Guide 3 (Statistical Disclosure by Bank Holding Companies) or Industry Guide 6 (Disclosures Concerning Unpaid Claims and Claim Adjustment Expenses of Property-Casualty Insurance Underwriters).[34] The Commission believes that foreign issuers that switch to IFRS and to which these Guides apply do not need a general accommodation.

The Commission solicited comment on behalf of the staff on whether amendments would be appropriate to address the information required under Industry Guide 3 or Industry Guide 6 in the context of first-time adopters changing their basis of accounting to IFRS. The general view expressed in the comments submitted by issuers subject to Industry Guide 3 or 6 is that they should be permitted to present only two years of Industry Guide information under IFRS, consistent with the presentation of their primary financial statements. Commenters thought it an unreasonable burden to restate the earliest of three years of information under IFRS, and that there would be no significant benefit to investors from such a restatement.

Industry Guide disclosure is intended to provide a ''track-record'' of trend information such as loan quality information for banks providing disclosure under Industry Guide 3 or property casualty loss reserve development under Industry Guide 6. The Commission recognizes that the switch to IFRS will impact the Industry Guide disclosure of first-time adopters, who may not have available prior years of Industry Guide information prepared under IFRS. Although the staff does not intend to amend the Industry Guides requirements, the staff believes and intends to apply the Industry Guides such that a first-time adopter of IFRS who relies on the adopted amendments to Form 20–F will be in compliance with existing Industry Guide standards if it provides two years of Industry Guide information under IFRS, with information provided under U.S. GAAP or Previous GAAP to cover earlier years as required by the Industry Guides, as applicable.

F. Financial Statements and Information for Interim Periods During the Transition Year in Registration Statements, Prospectuses and Other Filings

As noted in the Proposing Release, there are many difficult and unique issues relating to the appropriate presentation of financial information during the Transition Year. Some commenters had useful suggestions in this area, which are reflected in the adopted amendments to Form 20–F. Because these issues affect foreign private issuers that are switching to IFRS and that will use the accommodation to omit financial statements for the third financial year, the Commission believes it is appropriate to provide specific guidance and relief with respect to the financial information included in SEC filings.

1. Exchange Act Reporting

Foreign private issuers that are subject to the reporting requirements under Section 13(a) or 15(d) of the Exchange Act are required to furnish Reports on Form 6–K.[35] These reports on Form 6–K generally consist of material information that a foreign private issuer publishes or makes public voluntarily or

[31] While issuers are not permitted to have a side-by-side columnar format that combines information based on two or more sets of accounting principles, a format that presents the same information on a single page or table would be permitted, assuming there are appropriate legends and explanations. For example, an issuer could present selected financial data in a single page as follows: IFRS for years 2004 and 2005; below that U.S. GAAP for years 2001 through 2005; and below that Previous GAAP for years 2001 through 2004. Companies are generally free to choose the presentation of selected financial data that they feel is appropriate for their situation.

[32] This is the existing requirement under Form 20–F, Instruction 2 to Item 5.

[33] Under Item 4 of Form 20–F, an issuer must provide information about its business operations, the products it makes and the services it provides, and the factors that affect its business. The financial information that is included in response to this requirement is generally based on the primary financial statements of the issuer.

[34] Industry Guides serve as expressions of the policies and practices of the Division of Corporation Finance. They are of assistance to issuers, their counsel and others preparing registration statements and reports, as well as to the Commission's staff.

[35] Rules 13a–16 and 15d–16.

in accordance with home market requirements. There is no requirement under Form 6–K to present any specific financial information, either reconciled to U.S. GAAP or otherwise.

The Commission is not imposing any additional requirements under Form 6–K for companies that are switching from Previous GAAP to IFRS. If a foreign private issuer is not filing a registration statement or using a prospectus under the Securities Act or filing an initial registration statement under the Exchange Act, the amendments the Commission is adopting will not affect the interim period financial information that is required to be filed with or furnished to the SEC.[36] When a foreign private issuer publishes material financial information, whether fully or partly in accordance with IFRS,[37] it should consider whether that information should be furnished on a Form 6–K Report.

2. Financial Information in Securities Act Registration Statements and Prospectuses and Initial Exchange Act Registration Statements Used Less Than Nine Months After the Financial Year End

In registration statements and prospectuses under the Securities Act and initial registration statements under the Exchange Act, if the document is dated less than nine months after the end of the last audited financial year, foreign private issuers are not required to include interim period financial information. However, if a foreign private issuer has published interim period financial information, Item 8.A.5 of Form 20–F requires these registration statements and prospectuses to include that information.[38] The intent of this requirement is to ensure that the information available in U.S. offering documents is as current as information that is available elsewhere.

Generally, this interim period financial information is not required to be reconciled to U.S. GAAP because (among other reasons) the U.S. GAAP reconciliation relating to the year-end audited financial statements provides investors with a roadmap for evaluating the extent to which U.S. GAAP adjustments might impact interim period financial information. To the extent there are new reconciling items or the issuer has made a change in its accounting principles with respect to the interim period, the issuer must quantify material reconciling items that have not previously been addressed in the audited financial statements, and must provide narrative disclosures about the differences in accounting principles used.[39]

On occasion, a foreign private issuer may publicly disclose interim financial information that is prepared using accounting standards different from those used in its SEC filings.[40] In this instance, investors will not have the benefit of the roadmap and will not be able to evaluate the reconciling items between home country GAAP and U.S. GAAP. As a result, the interim financial information disclosed pursuant to Item 8.A.5 would have to be supplemented with a U.S. GAAP reconciliation.

During the Transition Year, a foreign private issuer that is switching to IFRS may publish interim financial information either fully or partly in accordance with IFRS and will likely not have filed audited year-end IFRS financial statements in its most recent Form 20–F Annual Report. A strict interpretation of Item 8.A.5 would therefore normally require that the issuer provide a U.S. GAAP reconciliation relating to the IFRS interim financial information.

The Commission recognizes the significant burdens associated with the changeover to a new basis of accounting and the benefits to investors of having companies publish financial information in accordance with IFRS during the Transition Year. As a result, the Commission does not believe a U.S. GAAP reconciliation is necessary in this circumstance, and is including within new Instruction G to Form 20–F a provision that would permit a foreign private issuer to include IFRS financial information pursuant to the last three sentences of Item 8.A.5 without either descriptive or quantified U.S. GAAP reconciling information. Because companies may publish interim financial information that does not fully comply with IFRS during the Transition Year, this relief extends to information that makes reference to IFRS but that may not be fully in accordance with IFRS.[41] In addition, recognizing that foreign private issuers may present IFRS financial information covering a full financial year as well as interim periods, this relief also extends to annual year-end financial information that a foreign private issuer may publish during the Transition Year. Because such data may not be comparable to the issuer's historical or future data or to other issuers and not accompanied by a U.S. GAAP reconciliation, such published information should be accompanied by a statement that the information is not in compliance with IFRS and other appropriate cautionary language.

This relief only applies to documents described above that are used prior to nine months after the end of a foreign private issuer's financial year. Documents that are used subsequent to nine months after financial year end are addressed in the next section.

3. Financial Statements in Securities Act Registration Statements and Prospectuses and Initial Exchange Act Registration Statements Used More Than Nine Months After the Financial Year End

In registration statements and prospectuses under the Securities Act and initial registration statements under the Exchange Act, if the document is dated more than nine months after the end of the last audited financial year, foreign private issuers must provide consolidated interim period financial statements covering at least the first six months of the financial year and the comparative period for the prior financial year.[42] These unaudited interim period financial statements must be prepared using the same basis

[36] If a Form 6–K Report is incorporated by reference into a registration statement or prospectus, then the issuer should refer to the relief outlined below and in new General Instruction G to Form 20–F.

[37] The Committee of European Securities Regulators (''CESR''), for example, has encouraged European companies to provide investors with quantified information regarding the impact of the change to IFRS as soon as sufficiently reliable information is available. *See* CESR, ''European Regulation on the Application of IFRS in 2005: Recommendation for Additional Guidance Regarding the Transition to IFRS,'' (December 2003) (''CESR Recommendation'').

[38] Under Item 512(a)(4) of Regulation S–K, a foreign private issuer that registers securities on a shelf registration statement basis is required to undertake to include any financial statements required by Item 8.A of Form 20–F at the start of any delayed offering or throughout a continuous offering.

[39] Instruction 3(a) and (b) to Item 8.A.5 of Form 20–F.

[40] This may occur when an issuer whose audited financial statements included in its Annual Report on Form 20–F are prepared in accordance with U.S. GAAP publishes interim financial information prepared using home country GAAP.

[41] An issuer may be unable to comply fully with IFRS for interim financial statements during the Transition Year due to subsequent changes that may be made to standards or the development of interpretive material. Because of the potential for such changes, the accounting policies that an issuer applies in preparing its preliminary opening balance sheet may not be the same as those to be applied to the final opening balance sheet when that issuer prepares it first complete IFRS financial statements.

CESR, for example, has recommended that companies switching to IFRS in 2005 apply in their 2005 interim financial reports at least the IAS/IFRS recognition and measurement principles that will be applicable at year end. *See* CESR Press Release, ''Preparing for the Implementation of International Financial Reporting Standards (IFRS),'' CESR/03–514 (December 30, 2003).

[42] Item 8.A.5 of Form 20–F and Item 512(a)(4) of Regulation S–K

of accounting as the audited financial statements contained or incorporated by reference in the document and include or incorporate by reference a reconciliation to U.S. GAAP.[43]

In the Proposing Release, the Commission noted the difficulties faced by foreign private issuers in switching to IFRS during the Transition Year and solicited comment on various approaches to the presentation of interim period financial information. Because the Commission believes investors need a basis to compare interim period financial statements with annual financial statements, especially in connection with offerings or initial listings of securities that take place in the late months of the Transition Year or the early part of the year thereafter, the Commission does not believe it is appropriate to apply for situations after nine months the same approach described above for situations prior to nine months.

The Commission received helpful suggestions from various commenters who noted that condensed U.S. GAAP financial information can be used as an information bridge between annual and interim periods to which different accounting standards are applied. The revisions incorporate this approach.

In this area, the Commission is providing first-time adopters with a number of options to comply with its requirements. This is appropriate because the Commission wants to encourage foreign companies to continue to access the U.S. public capital markets during the Transition Year. In addition, this flexible approach balances the information needs of investors with the information resources that various companies may have available. The Commission is amending Form 20–F to provide four options for foreign private issuers that are first-time adopters, that are or will be eligible to use the two-year financial statement accommodation and that are required to provide interim period financial statements in Securities Act or Exchange Act documents used after nine months from financial year end:

- The Previous GAAP Option
- The IFRS Option
- The U.S. GAAP Condensed Information Option, and
- The Case-by-Case Option.

Each of these options is described below. In addition, the Commission reminds issuers that, regardless of the option selected, when interim period financial statements are required to be presented under Item 8.A.5, those financial statements must be accompanied by disclosure based on the accounting principles in the option used that is made pursuant to Item 5 of Form 20–F ''Operating and Financial Review and Prospects.''

(a) The Previous GAAP Option

A foreign private issuer may present three years of audited Previous GAAP financial statements as well as Previous GAAP interim financial statements for the current year and comparable prior year period, all reconciled to U.S. GAAP. For example, a 2005 first time adopter would present audited financial statements for 2002, 2003 and 2004 and unaudited financial statements for the six months (or nine months) of 2004 and 2005, all in accordance with Previous GAAP and reconciled to U.S. GAAP. This option generally reflects the application of the Commission's current rules, without any specific relief.

(b) The IFRS Option

A foreign private issuer may present two years of audited financial statements as well as interim financial statements for the current year and comparable prior year period, all prepared in accordance with IFRS and reconciled to U.S. GAAP. For example, a 2005 first-time adopter would present audited financial statements for 2003 and 2004 and unaudited financial statements for the six months (or nine months) of 2004 and 2005, all in accordance with IFRS and reconciled to U.S. GAAP. This option generally reflects the application of current rules, with the relief afforded through the amendments being adopted in this release that permit a first-time adopter to omit IFRS financial statements for the third financial year.

(c) The U.S. GAAP Condensed Information Option

A foreign private issuer may present: (i) Audited Previous GAAP financial statements for the prior three years, reconciled to U.S. GAAP (*e.g.*, 2002, 2003, and 2004); (ii) unaudited IFRS financial statements for the current and prior year comparable interim periods, reconciled to U.S. GAAP (*e.g.*, six months or nine months of 2004 and 2005); and (iii) unaudited condensed U.S. GAAP balance sheets and income statements for the most recent prior financial year and the current and prior year comparable interim periods (*e.g.*, full year 2004 and six months or nine months of 2004 and 2005).

This option allows foreign companies to use condensed U.S. GAAP information to bridge the gap in interim information between Previous GAAP and IFRS. The condensed U.S. GAAP information should provide a level of detail consistent with that required by Article 10 of Regulation S–X for interim financial statements.

(d) The Case-by-Case Option

Some first-time adopters may find that they are not able to comply fully with any of the options outlined above and yet have available comparable financial information based on a combination of Previous GAAP, IFRS and U.S. GAAP. The Commission does not believe these foreign private issuers should necessarily be foreclosed from publicly offering or listing their securities in the United States. Foreign companies in this situation are encouraged to contact the Office of International Corporate Finance in the Division in the Division of Corporation Finance, in writing and well in advance of any filing deadlines, for guidance relating to interim period financial statements.

G. Issuers Using IFRS as Adopted by the European Union

While the EU has adopted, as published by the IASB, almost all international financial reporting standards, it has recently adopted a regulation endorsing IAS 39 ''Financial Instruments: Recognition and Measurement'' with the exception of certain provisions on the use of the full fair value option and on hedge accounting.[44] EU listed companies are required only to comply with those accounting standards that have been adopted by the EU. As such, it is possible for an EU company to comply with EU accounting regulations but still produce financial statements that are not fully compliant with IFRS. Under EU guidance, companies that apply the EU-adopted version of IAS 39 should refer in their accounting policies to IFRS ''as adopted by the EU.''[45] The EU-adopted accounting standards are referred to in this release as ''EU GAAP.'' EU GAAP would appear to constitute a comprehensive body of accounting standards for purposes of Item 8.A.2 and Item 17 and 18 of Form 20–F and would be accepted in SEC

[43] Items 17(c) and 18 of Form 20–F.

[44] See European Commission Press Release ''Accounting standards: Commission endorses IAS 39,'' November 19, 2004; IP/04/1385 available at *http://europa.eu.int/comm/internal_market/accounting/index_en.htm*.

[45] See ''IAS 39 Financial Instruments: Recognition and Measurement—Frequently Asked Questions (FAQ);'' European Commission Memo/04/265, Brussels, November 19, 2004. As noted in that release, while it is possible that the EU may not adopt other parts of IFRS as written by the IASB, the European Commission believes that full endorsement of standards published by the IASB is preferable.

filings by EU companies.[46] As with other issuers relying on the accommodation, issuers that use EU GAAP would be required to include a reconciliation to U.S. GAAP.

Some commenters raised the issue of whether the use of EU GAAP would have an impact on the eligibility requirements under the accommodation. An EU issuer that prepares financial statements for its local markets under EU GAAP could use those same financial statements in its SEC filings and still qualify for the accommodation if it also provides a reconciliation to IFRS as published by the IASB. This reconciliation would relate to the two financial years for which the issuer would provide EU GAAP financial statements under the accommodation. The reconciliation of EU GAAP to IFRS as published by the IASB should contain information relating to financial statement line items and footnote disclosure equivalent to that required under IFRS.[47] The reconciliation would need to be audited by the issuer's independent auditor.

An issuer that applies EU GAAP also would continue to be required to provide an audited reconciliation to U.S. GAAP.[48] An issuer that applies EU GAAP may use the reconciliation to IFRS as published by the IASB as the basis for their reconciliation to U.S. GAAP, although using EU GAAP financial statements as the basis for the U.S. GAAP reconciliation also would be an acceptable approach.

The reconciliation to IFRS as published by the IASB would provide the basis for the following other disclosure required under the accommodation:

- Selected financial data provided pursuant to Item 3.A of Form 20–F would include relevant items based on the reconciliation to IFRS as published by the IASB as well as to U.S. GAAP; and
- The discussion under Item 5 of Form 20–F relating to the operating and financial review and prospects should focus on the financial statements prepared in accordance with EU GAAP. In the same manner as required for the U.S. GAAP reconciliation, this discussion should explain any differences between EU GAAP and IFRS as published by the IASB that are not otherwise discussed in the reconciliation and that the issuer believes are necessary for an understanding of the financial statements taken as a whole.

With regard to interim financial statements in a registration statement or prospectus, the provision in new Instruction G to Form 20–F that permits a foreign private issuer to include published IFRS financial information pursuant to the last three sentences of Item 8.A.5 without either descriptive or quantified U.S. GAAP reconciling information also applies to information that is prepared in accordance with EU GAAP. Additionally, EU issuers that provide interim financial information under the IFRS Option should present two years of annual financial statements as well as current and comparable prior year interim financial statements prepared in accordance with EU GAAP, with the reconciliation to IFRS as published by the IASB and the reconciliation to U.S. GAAP as described above.

III. Disclosures About First-Time Adoption of IFRS

The Commission is adopting amendments to Form 20–F to require certain disclosures by all first-time adopters of IFRS regardless of the year in which they change their basis of accounting. These requirements relate to the issuer's reliance on any of the exceptions to the general restatement and measurement principles allowed under IFRS 1 and to the reconciliation of Previous GAAP financial statements to IFRS.

A. Disclosure About Exceptions to IFRS

The Commission is adopting largely as proposed amendments to Item 5 of Form 20–F requiring an issuer to provide disclosure relating to its application of any of the mandatory or elective exceptions under IFRS 1. Under these amendments, an issuer must identify the items to which an exception was applied, describe which accounting principle it used, and explain how it applied that principle. When relying on an elective exception, an issuer must include, where material, qualitative disclosure of the impact on the issuer's financial condition, changes in financial condition and results of operations. When relying on a mandatory exception, an issuer must describe the exception as provided for in IFRS 1 and state that it complied. This disclosure would be contained in an issuer's disclosure pursuant to Item 5, which provides information on the issuer's financial and operating review and prospects. First-time adopters must provide this type of information under paragraph 38 of IFRS 1, which generally requires an explanation of how the transition to IFRS would affect an issuer's financial position. However, because paragraph 38 does not specifically reference disclosure related to the use of exceptions, the Commission believes more guidance through the amendments to Form 20–F to be appropriate.

Some commenters opposed these amendments, noting that the cost of providing the disclosures in relation to elective exceptions would likely outweigh the benefit to investors. Because issuers would generally apply elective exceptions where the information could not be assembled without undue cost, some commenters thought it unreasonable to require those companies to try to determine the significance of the exception and the impact that the application of the alternative accounting policies would have had on the issuer's reported financial condition. Some commenters indicated that issuers should determine for themselves what information, if any, they should provide in response to Item 5 of Form 20–F with regard to their use of the elective and mandatory exceptions, and that separate disclosure requirements would be duplicative.

Some commenters said information provided under the proposed requirements would be useful to investors and would complement disclosure provided under Item 5. Another commenter favored the proposals because discussion of the IFRS 1 exemptions would already be required under paragraph 38 of IFRS 1. Other commenters supported the proposed qualitative disclosures, but opposed any requirement to provide quantitative disclosures not already required by IFRS 1 as such information would be burdensome for issuers to obtain.

In the proposal, the Commission did not intend to require companies to provide a quantification of the financial statement effects of using a specific exception. As a result, there should not be significant costs associated with providing the required disclosure. In addition, when companies provide information as to the use of an exception, it does not have to appear in the notes to the audited financial

[46] An issuer that uses EU GAAP may, in note 1 to its financial statements, describe that body of accounting principles using any term it deems appropriate to designate reliance on the IFRS standards that the EU has adopted.

[47] For example, an issuer applying EU GAAP will include financial statement footnote disclosure that complies with IAS 32 ''Financial Instruments: Disclosure and Presentation'' even if the issuer does not fully apply IAS 39 relating to hedge accounting, as permitted under EU GAAP. The EU GAAP–IFRS reconciliation should disclose the financial statement effects and appropriate information in accordance with IAS 32, in respect of the full application of IAS 39 if different from that under EU GAAP.

[48] The U.S. GAAP reconciliation may be in accordance with Item 17 or Item 18 of Form 20–F, as appropriate. See General Instruction E(c) to Form 20–F.

statements, although there would be no objection to including such information in the notes.

The Commission has revised the amendment to clarify that companies are not required to provide quantified numerical information in their explanation of the financial significance of an exception. Rather, the qualitative disclosure required by these amendments is intended to give investors some information as to the magnitude of the effect of an exception on an issuer's financial statements in qualitative terms. This information will permit investors to better understand the significant items that impact the consistency and comparability between companies for past and future periods.

For example, a substantial portion of the issuer's assets or operations may have been obtained in a prior business combination transaction accounted for as a pooling of interests under both Previous GAAP and in the first IFRS financial statements based on an elective exception in IFRS 1. If that election had not been used, the transaction would have been accounted for as a purchase under IFRS 3. Under the adopted amendments, the issuer would describe that, absent the exception:

- The business combination would have been accounted for as a purchase under IFRS 3;
- The [applicable entity] would have been identified as the acquirer;
- The fair value of the entire purchase consideration of [dollar amount] would have been recognized in the financial statements at that time;
- The purchase consideration would have been allocated to the following major categories of acquired tangible and intangible assets and liabilities based on their fair values: [naming the categories];
- Goodwill would have been recognized, if applicable;
- The fair values of the acquired assets would have been amortized to expense over their respective useful lives; and
- The approximate amount of the acquiree's revenues and assets (or percentage of the issuer's corresponding totals) at the time of the business combination, to illustrate the magnitude of the use of the exemption [stating the amounts or percentages].

If the accounting treatment that would have been applied under IFRS 3 is consistent with the treatment under U.S. GAAP, the issuer may satisfy the adopted disclosure requirement by cross-referencing the applicable portions of the U.S. GAAP reconciliation.

Similar broad disclosure should be provided for the use of other exceptions under IFRS 1.

B. Reconciliation From Previous GAAP

The Commission is adopting as proposed a new instruction 3 to Item 8 of Form 20–F to require that the mandatory reconciliation from Previous GAAP to IFRS give ''sufficient data to enable users to understand the material adjustments to the balance sheet and income statement,'' and, if presented under Previous GAAP, the cash flow statement. The Commission did not propose, and is not adopting, specific form or content requirements. It notes, however, that a reconciliation following example 11 under Implementation Guidance 63 (''IG 63'') of IFRS 1 will meet the requirement that it is adopting. Similarly, a reconciliation based on the form and content provisions of Item 17 of Form 20–F would meet the requirement.

Most commenters did not oppose the proposal and did not feel that following the example given in IG 63 would be unduly burdensome. Many commenters shared the view that the Commission should not specify form and content requirements for the reconciliation from Previous GAAP to IFRS, because companies will develop formats based on IFRS 1 in ways suitable to their individual circumstances. Other commenters indicated that IFRS's requirements regarding the presentation of differences between IFRS and Previous GAAP were sufficient. Because each issuer's situation will be different, the Commission does not believe a prescriptive approach to the information to be included in the reconciliation would be practicable or desirable.

IV. Paperwork Reduction Act Analysis

A. Background

The final rule amendment contains ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 (''PRA'').[49] The titles of the affected collections of information are:

(1) ''Form 20–F'' (OMB Control No. 3235–0288);

(2) ''Form F–1'' (OMB Control No. 3235–0258);

(3) ''Form F–2'' (OMB Control No. 3235–0257);

(4) ''Form F–3'' (OMB Control No. 3235–0256); and

(5) ''Form F–4'' (OMB Control No. 3235–0325).

These forms were adopted pursuant to the Securities Act and Exchange Act and set forth the disclosure requirements for annual reports and registration statements filed by foreign private issuers to provide material information to investors. The hours and costs associated with preparing, filing and sending these forms constitute reporting and cost burdens imposed by each collection of 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 disclosure is mandatory. There would be no mandatory retention period for the information disclosed, and responses to the disclosure requirements would not be kept confidential. The Commission published a notice requesting comment on the collection of information requirements in the Proposing Release and submitted these requirements to the Office of Management and Budget (''OMB'') for review in accordance with the PRA.[50] The OMB approved those estimates.

The Commission received several comment letters on the proposals, and has revised the final amendments in response to these comments. Some of the revisions have impacted the assumptions and estimates used in the analysis made under the Paperwork Reduction Act. The Commission is revising its previous burden estimates because of these revisions.

The Commission is adopting the new General Instruction G to Form 20–F to allow an eligible foreign private issuer to omit from SEC filings for its first year of reporting under IFRS the earliest of the three years of financial statements. The adopted amendments make the accommodation available to companies that adopt IFRS as their basis of accounting prior to or for the financial year starting on or after January 1, 2007. This is different from the proposal, which would have granted the accommodation to a foreign private issuer that adopted IFRS for the first time for a fiscal year that begins no later than January 1, 2007. This change was made in response to comments indicating that the amendments as proposed may have lead to situations in which an issuer that met the IFRS 1 definition of first-time adopter would be ineligible to rely on the accommodation. Because this change to the period during which the accommodation applies will affect only timing, the Commission assumes that it will have no impact on the burden estimates. Because the provision of the third year of financial statements under a

[49] 44 U.S.C. 3501 *et seq.*

[50] 44 U.S.C. 3507(d) and 5 CFR 1320.11.

comprehensive body of accounting standards is not calculated as a burden for PRA purposes, eliminating the third year of IFRS financial statements is not a burden reduction.

In response to comments that the proposed amendments regarding condensed U.S. GAAP financial information would be excessively burdensome to issuers, the final amendments do not require an issuer that relies on the accommodation to provide condensed U.S. GAAP information. Although the proposals relating to condensed U.S. GAAP financial information would have increased in the burden estimates, not requiring that information in the final amendments will have a neutral effect on the PRA burden.[51]

The amendments relating to Previous GAAP financial information are adopted as proposed, for which commenters expressed wide support. The Commission estimates that the requirement for appropriate cautionary language from any issuer that includes, incorporates by reference or refers to Previous GAAP financial information in an SEC disclosure document will result in a two hour burden increase.

The Commission is adopting a flexible approach with regard to the presentation of interim financial statements, under which an issuer that provides interim financial statements may elect to provide disclosure under one of four options described in Section II.F.3.[52] This approach differs from the proposal, which was consistent with current requirements before the amendment. Commenters cited the potential burden of maintaining financial statements under both Previous GAAP and IFRS in their opposition to the proposed approach, to which they suggested alternatives. The Commission believes that the amendments regarding interim financial statements will lead to a two hour increase in the burden estimates related to the accommodation.

To rely on the accommodation as adopted, issuers that comply with EU GAAP must provide a reconciliation to IFRS as published by the IASB, while all others must provide an explicit and unreserved statement of compliance with IFRS.[53] Because developments related to EU GAAP occurred subsequent to the issuance of the Proposing Release, the amendments as proposed did not include these conditions. The Commission believes the reconciliation to IFRS as published by the IASB for issuers using EU GAAP will lead to a one hour increase in the burden estimates related to the accommodation.

In total, the Commission estimates that the amendments related to the accommodation described in Section II will account for a one-time increase of five hours to the PRA burden associated with Forms 20–F, F–1, F–2, F–3 and F–4, respectively. The Commission also estimates that, of the amendments described in Section III that affect all first-time IFRS adopters, the disclosure about IFRS exceptions will cause a one-time increase of 1.5 per cent in the number of burden hours required to prepare each form while the amendments regarding the reconciliation from Previous GAAP would not cause any increase in the burden estimates. Accordingly, an issuer that adopts IFRS prior to or for its 2007 financial year will accrue both the five hour burden and the 1.5 percent burden increase. An issuer that adopts IFRS later than its 2007 financial year will accrue only the 1.5 percent increase.

For purposes of the Paperwork Reduction Act, the Commission estimates that the one-time incremental increase in the paperwork burden for all first-time adopters of IFRS relying on the accommodation and providing the disclosure related to first-time adoption of IFRS would be approximately 4,273 hours of company time and approximately $3,845,700 for the services of outside professionals. The Commission estimates that the incremental increase in the paperwork burden for all first-time adopters of IFRS after that period would be approximately 3,727 hours of company time and approximately $3,354,300 for the services of outside professionals. It estimated the average number of hours each entity spends completing the forms and the average hourly rate for outside professionals.[54] That estimate includes the time and the cost of in-house preparers, reviews by executive officers, in-house counsel, outside counsel, independent auditors and members of the audit committee.[55]

B. Burden and Cost Estimates Related to the Accommodation

1. Form 20–F

Form 20–F is the combined registration statement and annual report for foreign private issuers under the Exchange Act. It also presents the disclosure requirements for registration statements filed by foreign private issuers under the Securities Act. The Commission estimates that currently 1,036 issuers file Form 20–Fs each year. It also estimates that these issuers incur 25% of the burden required to produce the Form 20–Fs, resulting in 677,298 annual burden hours incurred by issuers out of a total of 2,709,192 annual burden hours. Thus, the Commission estimates that 2,615 total burden hours per response are currently required to prepare the Form 20–F. The Commission further estimates that outside professionals account for 75% of the burden at an average cost of $300 per hour for a total cost of $609,568,200.

The Commission estimates that the accommodation will affect approximately 35% of the 1,036 issuers that file on Form 20–F.[56] The Commission therefore expects that each of 363 issuers will have an increase of 5 hours in the number of hours required to prepare their Form 20–F, for a total increase of 1,815 hours. It expects that these issuers will bear 25% of these

[51] In the Proposing Release the Commission estimated that the accommodation would represent an overall PRA burden increase of 2 percent, the majority of which would have been attributable to the proposed requirement for condensed U.S. GAAP financial information.

[52] It is estimated that approximately 10 percent of the roughly 400 issuers that will rely on the accommodation will be subject to the provisions regarding interim financial statements. Of these, it is assumed that 10 percent (or four issuers), will select the Previous GAAP Option, 60 percent (or 24 issuers) will use the IFRS Option, 20 percent (or 8 issuers) will use the Condensed U.S. GAAP Information Option, and 10 percent (or 4 issuers) will use the Case-by-Case Option. The Previous GAAP Option does not represent a change from existing rules and therefore would not cause a burden increase. The IFRS Option avoids a future increase but does not increase the burden, and the U.S. GAAP Option and the Case-by-Case Option represent slight increases because they would call for information that had not been previously required.

[53] It is estimated that 10 of the 400 issuers that are expected to rely on the accommodation will use EU GAAP.

[54] For convenience, the estimated PRA hour burdens have been rounded to the nearest whole number.

[55] In connection with other recent rulemakings, Commission staff has had discussions with several private law firms and accounting firms to estimate an hourly rate of $300 as the cost of outside professionals that assist companies in preparing these disclosures. For Securities Act registration statements, the staff also considers additional reviews of the disclosure by underwriter's counsel and underwriters.

[56] This figure is based on the estimate of the ratio of the actual number of foreign private issuers that (1) Are incorporated in countries that will require or permit the use of IFRS beginning in year 2005; (2) are incorporated in countries that presently permit but do not require the use of IFRS; (3) have filed either an annual report and/or a registration statement on Form 20–F between January 1 and December 31, 2003; and (4) appear current with their reporting obligations under the Exchange Act as of December 31, 2003, to the actual number of the applicable forms that were filed between January 1 and December 1, 2003. For purposes of this estimate the approximate number of foreign private issuers that currently provide IFRS financial statements in their SEC filings (50) has been excluded.

increased burden hours (454 hours). It further expects that outside firms will bear 75% of the increased burden hours (1,362 hours) at an average cost of $300 per hour for a total of $408,600 in increased costs.

Thus, the Commission estimates that the amendments to Form 20–F will increase the annual burden incurred by foreign private issuers in the preparation of Form 20–F to 677,752 burden hours. The Commission further estimates that the amendments will increase the total annual burden associated with Form 20–F preparation to 2,711,008 burden hours, which will increase the average number of burden hours per response to 2,617. It also estimates that the amendments will increase the total annual costs attributed to the preparation of Form 20–F by outside firms to $609,976,800.

2. Form F–1

The Commission estimates that currently 42 foreign private issuers file registration statements on Form F–1 each year. It also estimates that these issuers bear 25% of the burden required to produce a Form F–1, resulting in 18,895 annual burden hours incurred by issuers out of a total of 75,580 annual burden hours. Thus, the Commission estimates that 1,800 total burden hours per response are currently required to prepare a registration statement on Form F–1. It further estimates that outside professionals account for 75% of the burden to produce a Form F–1 at an average cost of $300 per hour for a total cost of $17,005,500.

The Commission estimates that the accommodation will affect approximately 30% of the 42 issuers that file registration statements on Form F–1.[57] It therefore expects that each of 13 issuers will have a five hour increase in the number of hours required to prepare a registration statement on Form F–1, for a total increase of 65 hours. The Commission expects that these issuers will bear 25% of these increased burden hours (16 hours). It further expects that outside firms will bear 75% of the increased burden hours (48 hours) at an average cost of $300 per hour for a total of $14,400 in increased costs.

Thus, the Commission estimates that the amendments to Form 20–F will increase the annual burden incurred by foreign private issuers in the preparation of Form F–1 to 18,911 burden hours. It also estimates that the amendments will increase the total annual burden associated with Form F–1 preparation to 75,644 burden hours, which will increase the average number of burden hours per response to 1,801. It further estimates that the amendments will increase the total annual costs attributed to the preparation of Form F–1 by outside firms to $17,019,900.

3. Form F–2

The Commission estimates that currently one foreign private issuer files a registration statement on Form F–2 each year. It also estimates that the issuer incurs 25% of the burden required to produce a Form F–2 resulting in 710 annual burden hours incurred by that issuer out of a total of 2,840 annual burden hours. Thus, the Commission estimates that 2,840 total burden hours per response are currently required to prepare a registration statement on Form F–2. It further estimates that outside professionals account for 75% of the burden to produce a Form F–2 at an average cost of $300 per hour for a total cost of $639,000.

Because the Commission does not expect that the accommodation will affect the one issuer that files a registration statement on Form F–2, it is not revising the burden estimates for that form.[58]

4. Form F–3

The Commission estimates that 102 foreign private issuers file registration statements on Form F–3 each year. It also estimates that issuers incur 25% of the burden required to produce a Form F–3 resulting in 4,159 annual burden hours incurred by issuers out of a total of 16,636 annual burden hours. Thus, it estimates that 163 total burden hours per response are currently required to prepare a registration statement on Form F–3. It further estimates that outside professionals account for 75% of the burden to produce a Form F–3 at an average cost of $300 per hour for a total cost of $3,743,100.

The Commission estimates that the accommodation will affect approximately 45% of the 102 issuers that file registration statements on Form F–3.[59] It therefore expects that each of 46 issuers will have a burden increase of five hours, for a total increase of 230 hours. It expects that these issuers will bear 25% of this increased burden (58 hours). It further expects that outside firms will bear 75% of the increased burden hours (174 hours) at an average cost of $300 per hour for a total of $52,200 in increased costs.

Thus, the Commission estimates that the amendments to Form 20–F will increase the annual burden incurred by foreign private issuers in the preparation of Form F–3 to 4,217 burden hours. It further estimates that the amendments will increase the total annual burden associated with Form F–3 preparation to 16,868 burden hours, which will increase the average number of burden hours per response to 165. It also estimates that the amendments will increase the total annual costs attributed to the preparation of Form F–3 by outside firms to $3,795,300.

5. Form F–4

The Commission estimates that 68 foreign private issuers file registration statements on Form F–4 each year. It also estimates that these issuers incur 25% of the burden required to produce a Form F–4 resulting in 24,503 annual burden hours incurred by foreign private issuers out of a total of 98,012 annual burden hours. Thus, it estimates that 1,441 total burden hours per response are currently required to prepare a registration statement on Form F–4. It further estimates that outside professionals account for 75% of the burden to produce a Form F–4 at an average cost of $300 per hour for a total cost of $22,052,700.

The Commission estimates that the accommodation will affect approximately 20% of the 68 issuers that file registration statements on Form F–4.[60] It therefore expects that each of 14 foreign private issuers will have a burden increase of five hours, for a total

[57] This figure is based on the estimate of the ratio of the number of foreign private issuers that (1) are incorporated in countries that will require or permit the use of IFRS beginning in year 2005; (2) are incorporated in countries that presently permit but do not require the use of IFRS; (3) have filed a Form F–1 between January 1 and December 31, 2003; and (4) appear current with their reporting obligations under the Exchange Act as of December 31, 2003, to the actual number of registration statements on Form F–1 that were filed between January 1 and December 1, 2003.

[58] The Commission has proposed to eliminate Form F–2. See ''Securities Offering Reform,'' Release No. 33–8501 (November 3, 2004).

[59] This figure is based on the estimate of the ratio of the number of foreign private issuers that (1) Are incorporated in countries that will require or permit the use of IFRS beginning in year 2005; (2) are incorporated in countries that presently permit but do not require the use of IFRS; (3) have filed a Form F–3 between January 1 and December 31, 2003; and (4) appear current with their reporting obligations under the Exchange Act as of December 31, 2003, to the actual number of registration statements on Form F–3 that were filed between January 1 and December 1, 2003.

[60] This figure is based on the estimate of the ratio of the number of foreign private issuers that (1) are incorporated in countries that will require or permit the use of IFRS beginning in year 2005; (2) are incorporated in countries that presently permit but do not require the use of IFRS; (3) have filed a Form F–4 between January 1 and December 31, 2003; and (4) appear current with their reporting obligations under the Exchange Act as of December 31, 2003, to the actual number of registration statements on Form F–4 that were filed between January 1 and December 1, 2003.

increase of 70 hours. It expects that issuers will bear 25% of these increased burden hours (18 hours). It further expects that outside firms will bear 75% of the increased burden hours (54 hours) at an average cost of $300 per hour for a total of $16,200 in increased costs.

Thus, the Commission estimates that the amendments to Form 20–F will increase the annual burden incurred by foreign private issuers in the preparation of Form F–4 to 24,521 burden hours. It further estimates that the amendments will increase the total annual burden associated with Form F–4 preparation to 98,084 burden hours, which will increase the average number of burden hours per response to 1,442. It further estimates that the amendments will increase the total annual costs attributed to the preparation of Form F–4 by outside firms to $22,068,900.

C. Burden and Cost Estimates Related to the Disclosure About First-Time Adoption of IFRS

1. Form 20–F

The Commission estimates that currently foreign private issuers file 1,036 Form 20–Fs each year, approximately 35% of which will be impacted by the amendments.[61] The Commission therefore expects that each of 363 issuers will have a burden increase of 1.5 per cent (39 hours) in the number of hours required to prepare their Form 20–F, for a total increase of 14,157 hours. It also expects that issuers will bear 25% of these increased burden hours (3,539 hours), and that outside firms will bear 75% of the increased burden hours (10,617 hours) at an average cost of $300 per hour for a total of $3,185,100 in increased costs.

Thus, the Commission estimates that the amendments to Form 20–F will increase the annual burden incurred by foreign private issuers in the preparation of Form 20–F to 680,837 burden hours. The Commission further estimates that the amendments will increase the total annual burden associated with Form 20–F preparation to 2,723,348 burden hours, which will increase the average number of burden hours per response to 2,629. It also estimates that the amendments will increase the total annual costs attributed to the preparation of Form 20–F by outside firms to $612,753,300.

2. Form F–1

The Commission estimates that 42 foreign private issuers file registration statements on Form F–1 each year, approximately 30% of which will be impacted by the amendments.[62] It therefore expects that each of 13 issuers will have an increase of 1.5 per cent (27 hours) in the number of burden hours required to prepare their registration statements on Form F–1, for a total increase of 351 hours. The Commission expects that issuers will bear 25% of these increased burden hours (88 hours), and that outside firms will bear 75% of the reduced burden hours (264 hours) at an average cost of $300 per hour for a total of $79,200 in increased costs.

Thus, the Commission estimates that the amendments to Form 20–F will increase the annual burden incurred by foreign private issuers in the preparation of Form F–1 to 18,983 burden hours. It also estimates that the amendments will increase the total annual burden associated with Form F–1 preparation to 75,932 burden hours, which will increase the average number of burden hours per response to 1,808. It further estimates that the amendments will increase the total annual costs attributed to the preparation of Form F–1 by outside firms to $17,084,700.

3. Form F–2

Because the Commission does not expect that the amendments affect the one issuer that files a registration statement on Form F–2, it is not revising the burden estimates for that form.[63]

4. Form F–3

The Commission estimates that approximately 102 foreign private issuers file registration statements on Form F–3 each year, 45% of which will be impacted by the amendments.[64] It therefore expects that each of 46 issuers will have an increase of 1.5 per cent (2 hours) in the number of burden hours required to prepare their registration statements on Form F–3, for a total increase of 92 hours. It expects that issuers will bear 25% of this increased burden hours (23 hours), and that outside firms will bear 75% of the increased burden hours (69 hours) at an average cost of $300 per hour for a total of $20,700 in increased costs.

Thus, the Commission estimates that the amendments to Form 20-F will increase the annual burden incurred by issuers in the preparation of Form F–3 to 4,182 burden hours. It further estimates that the amendments will increase the total annual burden associated with Form F–3 preparation to 16,728 burden hours, which will increase the average number of burden hours per response to 164. It also estimates that the amendments will increase the total annual costs attributed to the preparation of Form F–3 by outside firms to $3,763,800.

5. Form F–4

The Commission estimates 68 foreign private issuers file registration statements on Form F–4 each year, approximately 20% of which will be impacted by the amendments.[65] It therefore expects that each of 14 issuers will have an increase of 1.5 per cent (22 hours) in the number of burden hours required to prepare their registration statements on Form F–4, for a total increase of 308 hours. It expects that issuers will bear 25% of these increased burden hours (77 hours), and that outside firms will bear 75% of the increased burden hours (23 hours) at an average cost of $300 per hour for a total of $69,300 in increased costs.

Thus, the Commission estimates that the amendments to Form 20–F will

[61] This figure is based on the estimate of the ratio of the actual number of foreign private issuers that (1) are incorporated in countries that will require or permit the use of IFRS beginning in year 2005; (2) are incorporated in countries that presently permit but do not require the use of IFRS; (3) have filed either an annual report and/or a registration statement on Form 20–F between January 1 and December 31, 2003; and (4) appear current with their reporting obligations under the Exchange Act as of December 31, 2003, to the actual number of the applicable forms that were filed between January 1 and December 1, 2003. For purposes of this estimate the approximate number of foreign private issuers that currently provide IFRS financial statements in their SEC filings (50) has been excluded.

[62] This figure is based on the estimate of the ratio of the number of foreign private issuers that (1) are incorporated in countries that will require or permit the use of IFRS beginning in year 2005; (2) are incorporated in countries that presently permit but do not require the use of IFRS; (3) have filed a Form F–1 between January 1 and December 31, 2003; and (4) appear current with their reporting obligations under the Exchange Act as of December 31, 2003, to the actual number of registration statements on Form F–1 that were filed between January 1 and December 1, 2003.

[63] The Commission has proposed to eliminate Form F–2. See ''Securities Offering Reform,'' Release No. 33–8501 (November 3, 2004).

[64] This figure is based on the estimate of the ratio of the number of foreign private issuers that (1) are incorporated in countries that will require or permit the use of IFRS beginning in year 2005; (2) are incorporated in countries that presently permit but do not require the use of IFRS; (3) have filed a Form F–3 between January 1 and December 31, 2003; and (4) appear current with their reporting obligations under the Exchange Act as of December 31, 2003, to the actual number of registration statements on Form F–3 that were filed between January 1 and December 1, 2003.

[65] This figure is based on the estimate of the ratio of the number of foreign private issuers that (1) are incorporated in countries that will require or permit the use of IFRS beginning in year 2005; (2) are incorporated in countries that presently permit but do not require the use of IFRS; (3) have filed a Form F–4 between January 1 and December 31, 2003; and (4) appear current with their reporting obligations under the Exchange Act as of December 31, 2003, to the actual number of registration statements on Form F–4 that were filed between January 1 and December 1, 2003.

increase the annual burden incurred by issuers in the preparation of Form F–4 to 24,580 burden hours. It further estimates that the amendments will increase the total annual burden associated with Form F–4 preparation to 98,320 burden hours, which will increase the average number of burden hours per response to 1,446. It further estimates that the amendments will increase the total annual costs attributed to the preparation of Form F–4 by outside firms to $22,122,000.

D. New Burden Estimates

Based on the preceding analysis and assuming that the number of respondents for each of the affected forms remains unchanged, the five hour burden increase due to the proposed accommodation and the further 1.5 per cent increase due to the proposed disclosure requirements for all first-time IFRS adopters will, together, increase the total burden estimates for companies from 677,298 hours to 681,291 for Form 20–F (an increase from 2,615 hours to 2,631 hours per form), from 18,895 hours to 18,999 hours for Form F–1 (an increase from 1,800 hours to 1,809 hours per form), from 4,159 hours to 4,240 for Form F–3 (an increase from 163 hours to 166 hours per form), and from 24,503 hours to 24,598 hours for Form F–4 (an increase from 1,441 hours to 1,447 hours per form). As discussed above, after year 2007 the five hour burden increase from the proposed accommodation will no longer apply and only the 1.5 per cent increase due to the proposed disclosure requirements for all first-time IFRS adopters will remain.

V. Cost-Benefit Analysis

In the Proposing Release, the Commission solicited comments on the expected costs and benefits of the proposed amendments to Form 20–F, as well as on any other costs and benefits that could result from the adoption of those proposed amendments. In response, commenters expressed widespread support for the relief that the proposal would provide to eligible issuers by permitting them to file two rather than three years of financial information for the financial year they switch to IFRS. However, several commenters maintained that the proposals regarding condensed U.S. GAAP financial information and financial statements for interim periods during the Transition Year would impose costs on foreign private issuers that were unnecessary to achieve the rule's purpose and that outweighed the potential benefits to investors. The Commission has modified the final amendments in response to these concerns, thereby eliminating some of the potential costs that issuers may have incurred under the amendments as proposed.

Although none of the commenters provided quantitative data to support their views, the Commission has revised the amendments to Form 20–F in response to the concerns that the commenters expressed. The Commission expects that the adopted amendments to Form 20–F will result in the following benefits and costs.[66]

A. Expected Benefits

The amendments to Form 20–F will benefit foreign private issuers that adopt IFRS, either voluntarily or by mandate, by facilitating their compliance with SEC disclosure requirements as those issuers transition from their Previous GAAP to IFRS. By permitting eligible issuers to provide two rather than three years of financial statements prepared in accordance with IFRS, the amendments will allow those issuers to avoid the retroactive application of accounting standards that may not have been finalized during the earliest reporting period to which they would have to be applied in order to provide financial statements that were in compliance with SEC filing requirements.

By eliminating the third year of IFRS financial statements, the accommodation also benefits issuers by aligning SEC requirements with the IFRS 1 standard, which requires only one year of comparative information for the year IFRS is adopted. Through the amendments to Form 20–F, the Commission is eliminating the need for financial statements that would have been required by SEC rules but not otherwise. In years after their Transition Year, when the accommodation will no longer apply, issuers will have available IFRS financial statements for the financial year that they were permitted to exclude under the accommodation.

The amendments also will benefit investors in several ways. First, the accommodation will improve the clarity and quality of the financial disclosure that first-time adopters of IFRS provide in their SEC filings, thereby enhancing investor understanding. By clarifying the level of information required in the reconciliation of Previous GAAP information to IFRS, for example, the amendments will provide investors with a comparable level of reconciliation information between companies that will enable them to understand the material impact of the switch to IFRS on each issuer's financial statements.

The accommodation also is expected to benefit investors by encouraging the use of IFRS as a high quality body of accounting principles designed to accurately reflect the issuer's financial position. By reducing the burden of financial reporting in registration statements filed by first-time adopters of IFRS, the accommodation will encourage those issuers either to enter or to continue their participation in the U.S. capital market, which will further benefit investors by increasing their investment possibilities. These benefits will likely lead to a more efficient allocation of capital.

B. Expected Costs

The amendments to Form 20–F could result in some costs to issuers relying on the accommodation, although those costs should be minimal as they relate principally to how information required under rules existing prior to these amendments should be presented when based on primary financial statements based on IFRS.

One area in which issuers relying on the accommodation may face increased cost relates to the provision of interim financial statements. The Commission has adopted a flexible approach that provides an isuer with a number of options as to how to comply with the requirements. Although the costs of providing disclosure under the different options may vary, issuers providing interim financial information may select the approach that they deem most suitable to mitigate these potential burdens.

The elements of the adopted amendments that apply to all first-time adopters of IFRS will also lead to some increased costs to issuers. The amendments that clarify the level of information that the reconciliation from Previous GAAP to IFRS should contain are not expected to result in increased costs to issuers, because they do not require additional disclosure beyond what first-time adopters of IFRS must provide to comply with IFRS 1. The amendments relating to the use of any exceptions to IFRS will require additional disclosure, and consequently are expected to result in some increased costs for companies that are required to provide that disclosure.

VI. Regulatory Flexibility Act Certification

Under Section 605(b) of the Regulatory Flexibility Act,[67] the Commission certified that, when

[66] It is estimated these amendments will affect approximately 400 foreign private issuers.

[67] 5 U.S.C. 605(b).

adopted, the proposed amendment to Form 20–F under the Exchange Act would not have a significant impact on a substantial number of small entities. It included this certification in Part VII of the Proposing Release. While the Commission encouraged written comments regarding this certification, none of the commenters responded to this request.

VII. Promotion of Efficiency, Competition and Capital Formation Analysis

Section 23(a)(2) of the Exchange Act[68] requires the Commission, when adopting rules under the Exchange Act, to consider the anti-competitive effects of any rule it adopts. Furthermore, Section 2(b) of the Securities Act[69] and Section 3(f) of the Exchange Act[70] require the Commission, when engaging in a rulemaking that requires it to consider or determine whether an action is necessary or appropriate in the public interest, to consider whether the action will promote efficiency, competition and capital formation.

In the Proposing Release, the Commission considered the proposed amendment to Form 20–F in light of the standards set forth in the above statutory sections. It requested comment on whether, if adopted, the proposed Form 20–F amendment would result in any anti-competitive effects or promote efficiency, competition and capital formation. The Commission further encouraged commenters to provide empirical data or other facts to support their views on any anti-competitive effects or any burdens on efficiency, competition or capital formation that might result from adoption of the proposed Form 20–F amendments. It received no comments in response to these requests.

The adopted amendments allowing first-time adopters of IFRS to file two rather than three years of IFRS financial statements in their SEC filings are designed to increase efficiency, competition and capital formation by alleviating the burden and cost that eligible companies would face if required to recast under IFRS their results for the third year back for inclusion in annual reports and registration statements filed with the SEC. The amendments are intended to promote market efficiency by eliminating financial disclosure that would be costly to produce and would be of questionable value to investors. As a result of the more reliable disclosure that companies will provide under the amendments, investors will be able to make more informed investment decisions and capital may be allocated on a more efficient basis.

The amendments adopted to require all foreign companies that change their basis of accounting to IFRS to provide information relating to IFRS exceptions on which they relied and to satisfy a required level of information in their reconciliation from Previous GAAP to IFRS should increase efficiency, competition and capital formation by enabling investors to base their investment decisions on a better understanding of the financial information of those companies. This should lead to a more efficient allocation of capital.

VIII. Statutory Basis

The Commission is adopting amendments to Exchange Act Form 20–F pursuant to Sections 6, 7, 10, and 19(a) of the Securities Act of 1933 as amended, and Sections 3, 12, 13, 15, 23 and 36 of the Securities Exchange Act of 1934.

Text of Amendments

List of Subjects in 17 CFR Part 249

Reporting and recordkeeping requirements, Securities.

■ In accordance with the foregoing, the Commission is amending Title 17, Chapter II of the Code of Federal Regulations as follows:

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

■ 1. The authority citation for part 249 continues to read, in part, as follows:

Authority: 15 U.S.C. 78a *et seq.* and 7201 *et seq.*; and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

■ 2. Amend Form 20–F (referenced in § 249.220f) by adding General Instruction G, Instruction 4 to Item 5, and Instruction 3 to Item 8 to read as follows:

Note: The text of Form 20–F does not, and this amendment will not, appear in the Code of Federal Regulations.

Form 20–F

Registration Statement Pursuant to Section 12(b) or (g) of the Securities Exchange Act of 1934

* * * * *

General Instructions

* * * * *

G. First-Time Application of International Financial Reporting Standards.

(a) *Omission of Certain Required Financial Statements.* An issuer that changes the body of accounting principles used in preparing its financial statements presented pursuant to Item 8.A.2 (''Item 8.A.2'') to International Financial Reporting Standards (''IFRS'') published by the International Accounting Standards Board (''IASB'') may omit the earliest of the three years of audited financial statements required by Item 8.A.2 if the issuer satisfies the conditions set forth in this Instruction G. For purposes of this instruction, the term ''financial year'' refers to the first financial year beginning on or after January 1 of the same calendar year.

(b) *Applicable Documents.* This General Instruction G shall be available only for the following registration statements and annual reports:

(1) *Registration Statements.* This instruction shall be available for registration statements if:

(A) The issuer's most recent audited financial statements required by Item 8.A.2 are for the 2007 financial year or an earlier financial year;

(B) The issuer adopts IFRS for the first time by an explicit and unreserved statement of compliance with IFRS; and

(C) The audited financial statements for the issuer's most recent financial year for which audited financial statements are required by Item 8.A.2 are prepared in accordance with IFRS.

(2) *Annual Reports.* This instruction shall be available for annual reports if:

(A) The annual report relates to the 2007 financial year or an earlier financial year;

(B) The issuer adopts IFRS for the first time by an explicit and unreserved statement of compliance with IFRS; and

(C) The audited financial statements for the issuer's financial year to which the annual report relates are prepared in accordance with IFRS.

(c) *Selected Financial Data.* The selected historical financial data required pursuant to Item 3.A shall be based on financial statements prepared in accordance with IFRS and shall be presented for the two most recent financial years. The issuer shall present selected historical financial data in accordance with U.S. GAAP for the five most recent financial years, except as the issuer is otherwise permitted to omit U.S. GAAP information for any of the earliest of the five years pursuant to Item 3.A.1.

(d) *Information on the Company.* The reference in Item 4.B to ''the body of

[68] 15 U.S.C. 78w(a)(2).

[69] 15 U.S.C. 77b(b).

[70] 15 U.S.C. 78c(f).

accounting principles used in preparing the financial statements'' means IFRS and not the basis of accounting that the issuer previously used (''Previous GAAP'') or accounting principles used only to prepare the U.S. GAAP reconciliation.

(e) *Operating and Financial Review and Prospects.* The issuer shall present the information required pursuant to Item 5. The discussion should focus on the financial statements for the two most recent financial years prepared in accordance with IFRS. The issuer should refer to the reconciliation to U.S. GAAP for those years and discuss any aspects of the differences between IFRS and U.S. GAAP, not otherwise discussed in the reconciliation, that the issuer believes are necessary for an understanding of the financial statements as a whole. No part of the discussion should relate to financial statements prepared in accordance with Previous GAAP.

(f) *Financial Information.*

(1) *General.* With respect to the financial information required by Item 8.A, all instructions contained in Item 8, including the instruction requiring audits in accordance with U.S. generally accepted auditing standards, shall apply.

(2) *Interim Period Financial Information in a Registration Statement or Prospectus.* This instruction shall apply when an issuer is changing the body of accounting principles used in preparing its financial statements presented pursuant to Item 8.A.2 to IFRS. This instruction shall be available during the financial year in which the issuer is changing its accounting principles to IFRS and during the financial year thereafter until the date as of which the issuer is required to comply with Item 8.A.4.

(A) Instruction 3 of the Instructions to Item 8.A.5 shall not apply to published financial information that is prepared with reference to IFRS. This General Instruction G(f)(2)(A) shall be available for any financial information for any interim or annual financial period that the issuer publishes that is prepared with reference to IFRS.

(B) An issuer that is required to provide interim financial statements under the first sentence of Item 8.A.5 may satisfy the requirements of that item by providing one of the following:

(*1*) Three financial years of audited financial statements and interim financial statements (which may be unaudited) for the current and comparable prior year period, prepared in accordance with Previous GAAP and reconciled to U.S. GAAP as required by Item 17(c) or 18, as applicable;

(*2*) Two financial years of audited financial statements and interim financial statements (which may be unaudited) for the current and comparable prior year period, prepared in accordance with IFRS and reconciled to U.S. GAAP as required by Item 17(c) or 18, as applicable; or

(*3*) Three financial years of audited financial statements prepared in accordance with Previous GAAP and reconciled to U.S. GAAP as required by Item 17(c) or 18, as applicable; interim financial statements (which may be unaudited) for the current and comparable prior year period prepared in accordance with IFRS and reconciled to U.S. GAAP as required by Item 17(c) or 18, as applicable; and condensed financial information prepared in accordance with U.S. GAAP for the most recent financial year and the current and comparable prior year interim period (the form and content of this financial information shall be in a level of detail substantially similar to that required by Article 10 of Regulation S–X).

Instruction: An issuer that is unable to provide information that complies with Instruction G.(f)(2)(B) but has available comparable financial information based on a combination of Previous GAAP, IFRS and U.S. GAAP should contact the Office of International Corporate Finance in the Division of Corporation Finance, in writing and well in advance of any filing deadlines, to discuss its interim period financial information.

(g) *Quantitative and Qualitative Disclosures about Market Risk.* Information in the document that responds to Item 11 shall be presented on the basis of IFRS.

(h) *Financial Statements.* A document to which this Instruction G applies shall include financial statements that comply with Item 17 or 18 as follows:

(1) *Financial Statements in Accordance with IFRS.* The issuer may omit the earliest of the three years of financial statements required by Item 8.A.2.

(2) *U.S. GAAP Information.* The U.S. GAAP reconciliation required by Item 17(c) or 18 shall relate to the same periods covered by the financial statements prepared in accordance with IFRS.

Instructions: 1. An eligible issuer relying on this General Instruction G may elect to include, refer to, or incorporate by reference financial data prepared in accordance with Previous GAAP. An issuer electing to include, refer to, or incorporate by reference Previous GAAP financial information shall prominently disclose, at an appropriate location in the document, that the document includes, refers to, or incorporates by reference, as applicable, financial statements and other financial information based on both IFRS and Previous GAAP, and that the information based on Previous GAAP is not comparable to information prepared in accordance with IFRS.

2. Companies electing to include or incorporate by reference Previous GAAP financial information shall:

a. Present or incorporate by reference selected historical financial data prepared in accordance with Previous GAAP for the four financial years prior to the most recent financial year.

b. Present or incorporate by reference operating and financial review and prospects information pursuant to Item 5 that focuses on the financial statements for the two most recent financial years prior to the most recent financial year that were prepared in accordance with Previous GAAP. The discussion need not refer to the reconciliation to U.S. GAAP. No part of the discussion should relate to financial statements prepared in accordance with IFRS.

c. Include or incorporate by reference comparative financial statements prepared in accordance with Previous GAAP that cover the two financial years prior to the most recent financial year.

3. Companies electing to include or incorporate by reference Previous GAAP financial information shall not present that information side-by-side with IFRS financial information.

4. An issuer that has published audited financial statements prepared in accordance with IFRS for each of the three latest financial years shall include all three years of audited IFRS financial statements in its SEC filings.

(i) *Special Instruction for Certain European Issuers.* An issuer that changes the body of accounting principles used in preparing its financial statements presented pursuant to Item 8.A.2 to IFRS as adopted by the European Union (''EU GAAP''), and is otherwise eligible, is permitted to rely on this General Instruction G if it also provides the following information, which shall relate to the same financial years for which the issuer provides audited financial statements:

(1) An audited reconciliation to IFRS as published by the IASB that contains information relating to financial statement line items and footnote disclosure equivalent to that required under IFRS as published by the IASB.

(2) The audited reconciliation to U.S. GAAP specified by Item 17 or 18, as appropriate, that must begin either with IFRS as published by the IASB or with EU GAAP.

(3) Selected financial data pursuant to Item 3.A shall include information based on the reconciliation to IFRS as published by the IASB.

(4) Information required pursuant to Item 5 that refers to the reconciliation to IFRS as published by the IASB and to the reconciliation to U.S. GAAP and discusses any aspects of the differences between EU GAAP, IFRS as published by the IASB and U.S. GAAP not otherwise discussed in the reconciliation that the issuer believes are necessary for an understanding of the financial statements as a whole.

* * * * *

Item 5. Operating and Financial Review and Prospects

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Instructions to Item 5:

* * * * *

4. To the extent the primary financial statements reflect the use of exceptions permitted or required by IFRS 1, the issuer shall:

a. Provide detailed information as to the exceptions used, including:

i. An indication of the items or class of items to which the exception was applied; and

ii. A description of what accounting principle was used and how it was applied;

b. Include, where material, qualitative disclosure of the impact on financial condition, changes in financial condition and results of operations that the treatment specified by IFRS would have had absent the election to rely on the exception.

* * * * *

Item 8. Financial Information

* * * * *

Instructions to Item 8:

* * * * *

3. If the primary financial statements included in the document represent the first filing by the issuer with the SEC of consolidated financial statements prepared in accordance with IFRS, the notes to the financial statements prepared in accordance with IFRS shall disclose the following:

a. The reconciliation from Previous GAAP to IFRS required by IFRS 1 shall be presented in a form and level of information sufficient to explain all material adjustments to the balance sheet and income statement and, if presented under Previous GAAP, to the cash flow statement; and

b. To the extent the primary financial statements reflect the use of exceptions permitted or required by IFRS 1, the issuer shall identify each exception used, including:

i. An indication of the items or class of items to which the exception was applied; and

ii. A description of what accounting principle was used and how it was applied.

* * * * *

By the Commission.

Dated: April 12, 2005.

Jill M. Peterson,

Assistant Secretary.

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal_register/public_laws/public_laws.html*.

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To amend the Internal Revenue Code of 1986 to provide for the proper tax treatment of certain disaster mitigation payments. (Apr. 15, 2005; 119 Stat. 21)

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