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Washington, DC 20002

RESERVATIONS: (202) 741–6008

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Presidential Documents

Title 3—

The President

Executive Order 13384 of July 27, 2005

Assignment of Functions Relating to Original Appointments as Commissioned Officers and Chief Warrant Officer Appointments in the Armed Forces

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 301 of title 3, United States Code, it is hereby ordered as follows:

Section 1. *Assignment of Functions to the Secretary of Defense.* The Secretary of Defense shall perform the functions of the President under the following provisions of title 10, United States Code:

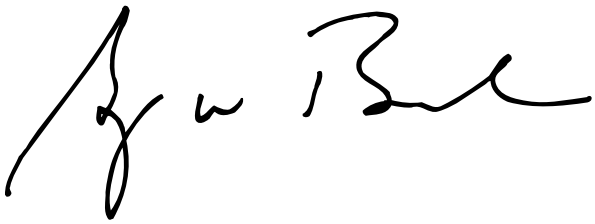
(a) subsection 531(a)(1); and

(b) the second sentence of subsection 571(b).

Sec. 2. *Reassignment of Functions Assigned.* The Secretary of Defense may not reassign the functions assigned to him by this order.

Sec. 3. *General Provisions.* (a) Nothing in this order shall be construed to limit or otherwise affect the authority of the President as Commander in Chief of the Armed Forces of the United States, or under the Constitution and laws of the United States to nominate or to make or terminate appointments.

(b) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, entities, officers, employees or agents, or any other person.



THE WHITE HOUSE,
July 27, 2005.

[FR Doc. 05–15160
Filed 7–28–05; 8:45 am]
Billing code 3195–01–P

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.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 77

[Docket No. 05–010–2]

Tuberculosis in Cattle and Bison; State and Zone Designations; California

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: We are adopting as a final rule, without change, an interim rule that amended the bovine tuberculosis regulations regarding State and zone classifications by raising the designation of California from modified accredited advanced to accredited-free. The interim rule was based on our determination that California met the criteria for designation as an accredited-free State.

EFFECTIVE DATE: The interim rule became effective on April 15, 2005.

FOR FURTHER INFORMATION CONTACT: Dr. Michael Dutcher, Senior Staff Veterinarian, National Tuberculosis Eradication Program, Ruminant Health Programs, National Center for Animal Health Programs, VS, APHIS, 4700 River Road Unit 43, Riverdale, MD 20737–1231, (301) 734–5467.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule effective and published in the **Federal Register** on April 15, 2005 (70 FR 19877–19878, Docket No. 05–010–1), we amended the bovine tuberculosis regulations regarding State and zone classifications by raising the designation of California from modified accredited advanced to accredited-free. The interim rule was based on our determination that California met the criteria for designation as an accredited-free State.

Comments on the interim rule were required to be received on or before June 14, 2005. We received two comments by that date, from a State agricultural agency and a cattlemen's industry group. Both commenters supported the interim rule.

Therefore, for the reasons given in the interim rule, we are adopting the interim rule as a final rule.

This action also affirms the information contained in the interim rule concerning Executive Order 12866 and the Regulatory Flexibility Act, Executive Orders 12372 and 12988, and the Paperwork Reduction Act.

Further, for this action, the Office of Management and Budget has waived its review under Executive Order 12866.

List of Subjects in 9 CFR Part 77

Animal diseases, Bison, Cattle, Reporting and recordkeeping requirements, Transportation, Tuberculosis.

PART 77—TUBERCULOSIS

■ Accordingly, we are adopting as a final rule, without change, the interim rule that amended 9 CFR part 77 and that was published at 70 FR 19877–19878 on April 15, 2005.

Done in Washington, DC, this 21st day of July 2005.

Elizabeth E. Gaston,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 05–14986 Filed 7–28–05; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2005–21707; Airspace Docket No. 05–ACE–22]

Modification of Legal Description of Class C and Class E Airspace; Lincoln, NE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: An examination of controlled airspace for Lincoln, NE revealed discrepancies in the airport name. This action corrects the airport name and removes references to effective dates and times established in advance by a Notice to Airmen from the legal descriptions for Class C and Class E airspace. The effective dates and times are now continuously published in the Airport/Facility Directory.

DATES: This direct final rule is effective on 0901 UTC, October 27, 2005. Comments for inclusion in the Rules Docket must be received on or before August 29, 2005.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2005–21707/ Airspace Docket No. 05–ACE–22, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Docket Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

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

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR 71 modifies the legal description of Class C airspace, Class E airspace designated as a surface area and Class E airspace beginning at 700 feet above the surface at Lincoln, NE. Class C airspace areas are published in paragraph 4000 of FAA Order 7400.9M, Airspace Designations and Reporting Points, dated August 30, 2004, and effective September 16, 2004, which is incorporated by reference in 14 CFR 71.1. Class E airspace areas are published in Paragraph 6002 and 6005 of the same FAA Order. The Class C and Class E airspace designations listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and therefore, is

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

Comments Invited

Interested parties are invited to participate in this rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2005–21707/Airspace Docket No. 05–ACE–22.'' The postcard will be date/time stamped and returned to the commenter.

Agency Findings

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

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

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

Paragraph 4000 Class C airspace.

* * * * *

ACE NE C Lincoln Airport, NE

Lincoln Airport, NE
(Lat. 40°51′03″ N., long. 96°45′33″ W.)

That airspace extending upward from the surface to and including 5,200 feet MSL within a 5-mile radius of the Lincoln Airport and that airspace extending upward from 2,700 feet MSL to 5,200 feet MSL within a 10-mile radius of the airport.

* * * * *

Paragraph 6002 Class E Airspace Designated as a Surface Area.

* * * * *

ACE NE E2 Lincoln Airport, NE

Lincoln Airport, NE
(Lat. 40°51′03″ N., long. 96°45′33″ W.)

Within a 5-mile radius of the Lincoln Airport

* * * * *

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

* * * * *

ACE NE E5 Lincoln, NE

Lincoln Airport, NE
(Lat. 40°51′03″ N., long. 96°45′33″ W.)
Lincoln VORTAC
(Lat. 40°55′26″ N., long. 96°44′31″ W.)
Lincoln Airport ILS
(Lat. 40°52′02″ N., long. 96°45′42″ W.)

That airspace extending upward from 700 feet above the surface within a 7.4-mile radius of the Lincoln Airport and within 3.9 miles each side of the 014° radial of the Lincoln VORTAC extending from the 7.4-mile radius to 10 miles north of the VORTAC and within 6 miles east and 4 miles west of the Lincoln ILS localizer course extending from the 7.4-mile radius to 18 miles south of the airport and within 4 miles east and 6 miles west of the Lincoln ILS localizer course extending from the 7.4-mile radius to 14.7 miles north of the airport, excluding that airspace within the Lincoln Airport, NE, Class C airspace area.

* * * * *

Issued in Kansas City, MO, on July 19, 2005.

Elizabeth S. Wallis,

Acting Area Director, Western Flight Services Operations

[FR Doc. 05–14977 Filed 7–28–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2005–21873; Airspace Docket No. 05–ACE–27]

Modification of Legal Description of the Class D and Class E Airspace; Salina Municipal Airport, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: An examination of controlled airspace for Salina Municipal Airport, KS has revealed discrepancies in the coordinates used in the legal description for the Class D and Class E airspace areas. This action corrects that discrepancy by incorporating the

current coordinates for the Airport Reference Point, the Salina VORTAC and the FLORY LOM. This action also removes references to effective dates and times established in advance by a Notice to Airmen from the legal descriptions for Class D airspace. The effective dates and times are now continuously published in the Airport/Facility Directory.

DATES: This direct final rule is effective on 0901 UTC, October 27, 2005. Comments for inclusion in the rules Docket must be received on or before August 31, 2005.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2005–21873/Airspace Docket No. 05–ACE–27, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

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

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR 71 modifies the legal description for Class D airspace and Class E airspace at Salina Municipal Airport, KS to contain Instrument Flight Rule (IFR) operations in controlled airspace. The areas are depicted on appropriate aeronautical charts. Class D airspace areas are published in paragraph 5000 of FAA Order 7400.9M, Airspace Designations and Reporting Points, dated August 30, 2004, and effective September 16, 2004, which is incorporated by reference in 14 CFR 71.1. Class E airspace areas designated as surface areas are published in Paragraph 6002 and 6004 of the same FAA Order. Class E airspace areas beginning at 700 feet above the surface are published in Paragraph 6005 of the same FAA Order. The Class D and Class E airspace designations listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

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

Comments Invited

Interested parties are invited to participate in this rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2005–21873/Airspace Docket No. 05–ACE–27.'' The postcard will be date/time stamped and returned to the commenter.

Agency Findings

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

The FAA has determined that this regulation only involves an established body of technical regulations for which frequency and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

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

Paragraph 5000 Class D airspace.

* * * * *

ACE KS D Salina, KS

Salina Municipal Airport, KS
(Lat. 38°47′27″ N., long. 97°39′08″ W.)

That airspace extending upward from the surface to and including 3,800 feet MSL

within a 4.9-mile radius of Salina Municipal Airport.

* * * * *

Paragraph 6002 Class E airspace designated as surface areas.

* * * * *

ACE KS E2 Salina, KS

Salina Municipal Airport, KS
(Lat. 38°47′27″ N., long. 97°39′08″ W.)

Within a 4.9-mile radius of Salina Municipal Airport.

* * * * *

Paragraph 6004 Class E airspace areas designated as an extension to a class D or class E surface area.

* * * * *

ACE KS E4 Salina, KS

Salina Municipal Airport, KS
(Lat. 38°47′27″ N., long. 97°39′08″ W.)
Salina VORTAC
(Lat. 38°55′31″ N., long. 97°37′17″ W.)

That airspace extending upward from the surface within 2 miles each side of the Salina VORTAC 190° radial extending from 4.9-mile radius of Salina Municipal Airport to the VORTAC.

* * * * *

Paragraph 6005 Class E airspace areas beginning at 700 feet above the surface.

ACE KS E5 Salina, KS

Salina Municipal Airport, KS
(Lat. 38°47′27″ N., long. 97°39′08″ W.)
Salina VORTAC
(Lat. 38°55′31″ N., long. 97°37′17″ W.).
FLORY LOM
(Lat. 38°40′53″ N., long. 97°38′42″ W.)
Salina Municipal Airport ILS
(Lat. 38°48′53″ N., long. 97°38′46″ W.)

That airspace extending upward from 700 feet above the surface within a 7.4-mile radius of Salina Municipal Airport and within 4.4 miles each side of the 010° radial of the Salina VORTAC extending from the 7.4-mile radius of 12 miles north of the VORTAC and within 4 miles west and 8 miles east of the Salina Municipal ILS localizer south course extending from the airport to 16 miles south of the FLORY LOM.

* * * * *

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

Elizabeth S. Wallis,

Acting Area Director, Western Flight Service Operations.

[FR Doc. 05–14984 Filed 7–28–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2005–21874; Airspace Docket No. 05–ACE–28]

Modification of Class E Airspace; Dodge City Regional Airport, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends Title 14 Code of Federal Regulations, part 71 (14 CFR 71) by revising Class E airspace areas at Dodge City Regional Airport, KS. A review of the Class E airspace surface area and the Class E airspace area extending upward from 700 feet above ground level (AGL) at Dodge City Regional Airport, KS reveals neither area complies with criteria in FAA Orders. These airspace areas and their legal descriptions are modified to conform to the criteria in FAA Orders.

DATES: This direct final rule is effective on 0901 UTC, October 27, 2005. Comments for inclusion in the Rules Docket must be received on or before August 31, 2005.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2005–21874/ Airspace Docket No. 05–ACE–28, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

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

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR 71 modifies the Class E surface area and the Class E airspace area extending upward from 700 feet AGL at Dodge City Regional Airport, KS. An examination of controlled airspace for Dodge City Regional Airport, KS revealed that neither airspace area is in compliance with FAA Orders 7400.2E, Procedures for Handling Airspace Matters, and 8260.19C, Flight Procedures and Airspace. The Class E airspace area is extending upward from 700 feet AGL is expanded from within a 6.5-mile radius to within a 6.8-mile radius of the Dodge City, KS Regional Airport. The coordinates of the Airport Reference Point are corrected in the legal description of both airspace areas. These modifications bring the legal descriptions of the Dodge City Regional Airport, KS Class E airspace areas into compliance with FAA Orders 7400.2E and 8260.19C. Class E airspace areas designated as surface areas are published in Paragraph 6002 of FAA Order 7400.9M, Airspace Designations and Reporting Points, dated August 30, 2004, and effective September 16, 2004, which is incorporated by reference in 14 CFR 71.1. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of the same Order. The Class E airspace designations listed in this document would be published subsequently in the Order.

The Direct Final Rule Procedure

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

Comments Invited

Interested parties are invited to participate in this rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions

presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2005–21874/Airspace Docket No. 05–ACE–28.'' The postcard will be date/time stamped and returned to the commenter.

Agency Findings

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

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

This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart I, section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority since it contains aircraft executing instrument approach procedures to Dodge City Regional Airport.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

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

Paragraph 6002 Class E airspace designated as surface areas.

* * * * *

ACE KS E2 Dodge City, KS

Dodge City Regional Airport, KS
(Lat. 37°45′47″ N., long. 99°57′56″ W.)

Within a 4.3-mile radius of Dodge City Regional Airport.

* * * * *

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

* * * * *

ACE KS E5 Dodge City, KS

Dodge City Regional Airport, KS
(Lat. 37°45′47″ N., long. 99°57′56″ W.)

That airspace extending upward from 700 feet above the surface within a 6.8-mile radius of Dodge City Regional Airport.

* * * * *

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

Elizabeth S. Wallis,

Acting Area Director, Western Flight Services Operations.

[FR Doc. 05–14983 Filed 7–28–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2005–21872; Airspace Docket No. 05–ACE–26]

Modification of Class E Airspace; Norfolk, NE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends Title 14 Code of Federal Regulations, part 71 (14 CFR 71) by revising Class E airspace areas at Norfolk, NE. A review of the Class E airspace surface area and the Class E airspace area extending upward from 700 feet above ground level (AGL) at Norfolk, NE reveals neither area complies with criteria in FAA Orders. These airspace areas and their legal descriptions are modified to conform to the criteria in FAA Orders.

DATES: This direct final rule is effective on 0901 UTC, October 27, 2005. Comments for inclusion in the Rules Docket must be received on or before August 29, 2005.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2005–21872/Airspace Docket No. 05–ACE–26, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

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

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR 71 modifies the Class E surface area and the Class E airspace area extending upward from 700 feet AGL at Norfolk, NE. An examination of controlled airspace for Norfolk, Karl Stefan Memorial Airport, NE revealed that neither airspace area is in compliance with FAA Orders 7400.2E, Procedures for Handling Airspace Matters, and 8260.19C, Flight Procedures and Airspace. The radius of the Class E surface area is expanded from within a 4.1-mile radius to within a 5.1-mile radius of the Karl Stefan Memorial Airport and the existing extensions remain the same. The Class E airspace area extending upward from 700 feet AGL is expanded from within a 6.6-mile radius to within a 7.6-mile radius of the Karl Stefan Memorial

Airport and the existing extensions remain the same. These modifications bring the legal descriptions of the Norfolk, NE Class E airspace areas into compliance with FAA Orders 7400.2E and 8260.19C. Class E airspace areas designated as surface areas are published in Paragraph 6002 of FAA Order 7400.9M, Airspace Designations and Reporting Points, dated August 30, 2004, and effective September 16, 2004, which is incorporated by reference in 14 CFR 71.1. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of the same Order. The Class E airspace designations listed in this document would be published subsequently in the Order.

The Direct Final Rule Procedure

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

Comments Invited

Interested parties are invited to participate in this rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2005–21872/Airspace Docket No. 05–ACE–26.'' The postcard will be date/time stamped and returned to the commenter.

Agency Findings

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

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

This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart I, section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority since it contains aircraft executing instrument approach procedures to Karl Stefan Memorial Airport.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

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

Paragraph 6002 Class E airspace designated as surface areas.

* * * * *

ACE NE E2 Norfolk, NE

Norfolk, Karl Stefan Memorial Airport, NE
(Lat. 41°59′08″ N., long. 97°26′06″ W.)
Norfolk VOR/DME
(Lat. 41°59′17″ N., long. 97°26′04″ W.)

Within a 5.1-mile radius of the Karl Stefan Memorial Airport and within 1.8 miles each side of the Norfolk VOR/DME 020°, 148°, 195°, and 314° radials extending from the 5.1-mile radius to 7 miles southeast, south, northwest, and northeast of the Norfolk VOR/DME.

* * * * *

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

* * * * *

ACE NE E5 Norfolk, NE

Norfolk, Karl Stephan Memorial Airport, NE
(Lat. 41°59′08″ N., long. 97°26′06″ W.)
Norfolk VOR/DME
(Lat. 41°59′17″ N., long. 97°26′04″ W.)

That airspace extending upward from 700 feet above the surface within a 7.6-mile radius of Karl Stephan Memorial Airport and within 4 miles southeast and 6 miles northwest of the 020° radial of the Norfolk VOR/DME extending from the 7.6-mile radius to 13 miles northeast of the airport and within 4 miles southwest and 6 miles northeast of the 148° radial of the Norfolk VOR/DME extending from the 7.6-mile radius to 13 miles southeast of the airport and within 4 miles northwest and 6 miles southeast of the 195° radial of the Norfolk VOR/DME extending from the 7.6-mile radius to 13 miles southwest of the airport and within 4 miles northeast and 6 miles southwest of the 314° radial of the Norfolk VOR/DME extending from the 7.6-mile radius to 13 miles northwest of the airport.

* * * * *

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

Elizabeth S. Wallis,

Acting Area Director, Western Flight Services Operations.

[FR Doc. 05–14981 Filed 7–28–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2005–21871; Airspace Docket No. 05–ACE–25]

Modification of Class E Airspace; Abilene Municipal Airport, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: An examination of the controlled airspace for Abilene Municipal Airport, KS has revealed a discrepancy in the size of the Class E airspace area. This action modifies the Class E5 airspace area beginning at 700 feet above the surface by deleting the airspace area extension and increasing the radius from 6.3-miles to 6.9-miles of the airport. This action brings the Class E5 airspace area into compliance with FAA directives.

DATES: This direct final rule is effective on 0901 UTC, October 27, 2005. Comments for inclusion in the Rules Docket must be received on or before August 19, 2005.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2005–21871/ Airspace Docket No. 05–ACE–25, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

FOR FURTHER INFORMATION CONTACT: Brenda Mumper, Air Traffic Division, Airspace Branch, ACE–520A, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR 71 modifies the Class E airspace beginning at 700 feet above the surface at Abilene Municipal Airport, KS to contain Instrument Flight Rule (IFR) operations in controlled airspace. The area will be depicted on appropriate aeronautical charts. Class E airspace areas are published in Paragraph 6005 of FAA Order 7400.9M, Airspace Designations and Reporting Points, dated August 30, 2004, and effective September 16, 2004, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

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

Comments Invited

Interested parties are invited to participate in this rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2005–21871/Airspace Docket No. 05–ACE–25.'' The postcard will be date/time stamped and returned to the commenter.

Agency Findings

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

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 25 FR 9565, 3 CFR, 2559–2563 Comp., p. 389.

§ 71.1 [Amended]

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

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

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

* * * * *

ACE KS E5 Abilene, KS

Abilene Municipal Airport, KS.
(Lat. 38°54′15″ N., long 97°14′09″ W.)

That airspace extending upward from 700 feet above the surface within a 6.9-mile radius of Abilene Municipal Airport.

* * * * *

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

Elizabeth S. Wallis,

Acting Area Director, Western Flight Services Operations.

[FR Doc. 05–14979 Filed 7–28–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2005–21907; Airspace Docket No. 05–ANM–11]

RIN 2120–AA66

Revocation of Compulsory Reporting Point; MT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revokes the GARRI Intersection as a compulsory reporting point. GARRI Intersection is located between the de-commissioned Drummond, MT Very High Frequency Omni-directional Range/Tactical Air Navigation (VORTAC) and Butte, MT. The FAA has determined that this intersection is no longer needed in the National Airspace System (NAS).

EFFECTIVE DATE: 0901 UTC, September 1, 2005.

FOR FURTHER INFORMATION CONTACT: Ken McElroy, Airspace and Rules, Office of System Operations and Safety, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Background

The Drummond Very High Frequency Omni-directional Range (VOR) has been out of service since April 2003, for the reasons discussed below, and the site on which the VOR was located was leased land. In 2002, the FAA learned that the landowner had constructed a house within 1,000 feet of the VOR without providing proper notice to the FAA. The VOR was temporarily taken out of service until the impacts of the house could be identified. A subsequent flight check of the VOR indicated that the house did not cause a problem; however, large vehicles parked near the VOR facility were interfering with the integrity of the signal. As such, the GARRI Intersection as a compulsory has been NOTAMed out of service. Additionally, subsequent to this NOTAM action the Drummond VOR was decommissioned on January 13, 2004.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by revoking GARRI Intersection as a compulsory reporting point. GARRI Intersection is located between the de-commissioned Drummond, MT VORTAC and Butte, MT. The FAA has determined this intersection is no longer needed to support the NAS. This action improves air safety and aids air traffic management.

Domestic Low Altitude Reporting Points are published in paragraph 7001 of FAA Order 7400.9M dated August 30, 2004, and effective September 16, 2004, which is incorporated by reference in 14 CFR 71.1. The Low Altitude Reporting Points listed in this document will be removed subsequently in the order.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9M, Airspace Designations and Reporting Points, dated August 30, 2004, and effective September 16, 2004, is amended as follows:

Paragraph 7001 Domestic Low Altitude Reporting Points.

* * * * *

7001 [Revoked]

GARRI:

INT Drummond, MT, 092° Butte, MT, 002° radials

* * * * *

Issued in Washington, DC, July 22, 2005.

Edith V. Parish,

Acting Manager, Airspace and Rules.

[FR Doc. 05–14973 Filed 7–28–05; 8:45 am]

BILLING CODE 4910–13–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 41

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–52115; File No. S7–11–01]

Technical Amendments to Rules Setting Forth the Method for Determining Market Capitalization and Dollar Value of Average Daily Trading Volume; Application of the Definition of Narrow-Based Security Index

AGENCIES: Commodity Futures Trading Commission and Securities and Exchange Commission.

ACTION: Joint technical amendment.

SUMMARY: The Commodity Futures Trading Commission (''CFTC'') and the Securities and Exchange Commission (''SEC'') (collectively ''Commissions'') are adopting technical amendments to certain references in rules under the

Commodity Exchange Act (''CEA'') and the Securities Exchange Act of 1934 (''Exchange Act'') that set forth the method for determining market capitalization and dollar value of average daily trading volume, to reflect new terminology and rule designations that will become effective as a result of the adoption by the SEC of Regulation NMS. Specifically, the phrase ''reported securities as defined in § 240.11Ac1–1'' will be replaced with the phrase ''NMS securities as defined in § 242.600.''

EFFECTIVE DATE: August 29, 2005.

FOR FURTHER INFORMATION CONTACT: CFTC—Elizabeth Ritter, Assistant General Counsel, Office of the General Counsel, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Telephone: (202) 418–5052. SEC—Ira Brandriss, Special Counsel, at (202) 551–5651; or Tim Fox, Attorney, at (202) 551–5643, Office of Market Supervision, Division of Market Regulation, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The CFTC is amending Rule 41.11 under the CEA, 17 CFR 41.11. The SEC is amending Rule 3a55–1 under the Exchange Act, 17 CFR 240.3a55–1.[1]

I. Discussion

The Commodity Futures Modernization Act (''CFMA''),[2] which became law on December 21, 2000, established a framework for the joint regulation of the trading of futures contracts on single securities and narrow-based security indexes (collectively, ''security futures products'') by the CFTC and the SEC. Under the CFMA, designated contract markets and registered derivatives transaction execution facilities may trade security futures products if they register with the SEC and comply with certain other requirements of the Exchange Act.[3] Likewise, national securities exchanges and national securities associations may trade security futures products if they register with the CFTC and comply with certain other requirements of the CEA.[4]

To distinguish between security futures on narrow-based security indexes, which are jointly regulated by the Commissions, and futures contracts on broad-based security indexes, which are under the exclusive jurisdiction of the CFTC, the CFMA also amended the CEA and the Exchange Act by setting forth an objective definition of ''narrow-based security index,'' and certain exclusions from this definition.[5]

One of the criteria that can affect the determination of whether an index is a narrow-based security index under the statutory definition relates to the dollar value of the average daily trading volume (''ADTV'') of component securities of the index.[6] One of the exclusions from the definition depends, in part, on whether each component security of the index is one of the 750 securities with the largest market capitalization and is one of 675 securities with the largest dollar value of ADTV.[7] The statutes require the Commissions, by rule or regulation, to jointly specify the method to be used to determine market capitalization and dollar value of ADTV for purposes of these provisions.[8]

In fulfillment of this mandate, on August 20, 2001, the Commissions jointly adopted Rule 41.11[9] under the CEA and Rule 3a55–1[10] under the Exchange Act.[11] These rules include references to ''reported securities as defined in § 240.11Ac1–1.''[12] A new regulation adopted by the SEC[13] changes the term ''reported security'' to the term ''NMS security,'' which is defined in new § 242.600. The definition of ''NMS security'' under new § 242.600 is identical to the definition of ''reported security'' under previous § 240.11Ac1–1.

To reflect the change, the Commissions are adopting conforming changes to Rule 41.11 under the CEA and Rule 3a55–1 under the Exchange Act.[14] Specifically, the phrase ''reported securities as defined in § 240.11Ac1–1'' that appears in Rules 41.11(a)(2)(ii) and (b)(2)(ii)(B) under the CEA will be replaced with the phrase ''NMS securities, as defined in § 242.600.'' The phrase ''reported securities as defined in § 240.11Ac1–1'' that appears in Rules 3a55–1(a)(2)(ii) and (b)(2)(ii)(B) under the Exchange Act will be replaced with the phrase ''NMS securities as defined in § 242.600 of this chapter.'' The amendments will take effect on August 29, 2005, the same day upon which Regulation NMS becomes effective.

II. Certain Findings

Under the Administrative Procedure Act (''APA''), notice of proposed rulemaking is not required when an agency, for good cause, finds ''that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.''[15] The amendments described herein are non-substantive, technical changes that are required to update existing terminology and references in the relevant rules to conform to the new terminology and rule designations adopted by the SEC. For these reasons, the Commissions find that it is unnecessary to publish notice of these amendments.[16]

III. Statutory Authority

Pursuant to the CEA and the Exchange Act and, particularly, Section 1a(25)(E)(ii) of the CEA[17] and Sections 3(a)(55)(F)(ii) of the Exchange Act,[18] the Commissions are adopting technical amendments to Rule 41.11(a)(2)(ii) and (b)(2)(ii)(B) under the CEA[19] and Rule 3a55–1(a)(2)(ii) and (b)(2)(ii)(B) under the Exchange Act.[20]

Text of Rules

List of Subjects

17 CFR Part 41

Security futures products.

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[1] Rule 41.11 of Subpart B of Rule 41 (''Narrow-Based Security Indexes'') under the CEA corresponds to Rule 3a55–1 under the Exchange Act.

[2] Pub. L. 106–554, 114 Stat. 2763 (2000).

[3] 15 U.S.C. 78a *et seq.*

[4] 7 U.S.C. 1 *et seq.*

[5] Section 1a(25) of the CEA, 7 U.S.C. 1a(25), and Section 3(a)(55) of the Exchange Act, 15 U.S.C. 78c(a)(55).

[6] *See* Section 1a(25)(A) of the CEA, 7 U.S.C. 1a(25)(A), and Section 3a(55)(B) of the Exchange Act, 15 U.S.C. 78c(a)(55)(B).

[7] *See* Section 1a(25)(B) of the CEA, 7 U.S.C. 1a(25)(B), and Section 3a(55)(C) of the Exchange Act, 15 U.S.C. 78c(a)(55)(C).

[8] *See* Section 1a(25)(E) of the CEA, 7 U.S.C. 1a(25)(E), and Section 3a(55)(F) of the Exchange Act, 15 U.S.C. 78c(a)(55)(F).

[9] *See* 17 CFR 41.11.

[10] *See* 17 CFR 240.3a55–1.

[11] *See* Securities Exchange Act Release No. 44724 (August 20, 2001), 66 FR 44490 (August 23, 2001).

[12] *See* 17 CFR 41.11(a)(2)(ii) and (b)(2)(ii)(B) and 17 CFR 240.3a55–1(a)(2)(ii) and (b)(2)(ii)(B).

[13] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005) (adopting Regulation NMS).

[14] The SEC proposed to make the conforming changes to Rule 3a55–1 under the Exchange Act in the release re-proposing Regulations NMS. *See* Securities Exchange Act Release No. 50870 (December 16, 2004), 69 FR 77424 (December 27, 2004) (File No. S7–10–04), at note 402. To comply with Section 1a(25)(E)(ii) of the CEA and Section 3(a)(55)(F)(ii) of the Exchange Act, the Commissions are adopting, herewith the conforming changes jointly.

[15] 5 U.S.C. 553(b)(3)(B).

[16] For similar reasons, the amendments do not require analysis under the Regulatory Flexibility Act or analysis of major status under the Small Business Regulatory Enforcement Fairness Act. *See* 5 U.S.C. 601(2) (for purposes of Regulatory Flexibility Act analyses, the term ''rule'' means any rule for which the agency publishes a general notice of proposed rulemaking); 5 U.S.C. 804(3)(C) (for purposes of congressional review of agency rulemaking, the term ''rule'' does not include any rule of agency organization, procedure, or practice that does not substantially affect the rights or obligations of non-agency parties).

[17] 7 U.S.C. 1a(25)(E)(ii).

[18] 15 U.S.C. 78c(a)(55)(F)(ii).

[19] 17 CFR 41.11(a)(2)(ii) and (b)(2)(ii)(B).

[20] 17 CFR 240.3a55–1(a)(2)(ii) and (b)(2)(ii)(B).

17 CFR Part 240

Securities.

Commodity Futures Trading Commission

■ In accordance with the foregoing, Title 17, Chapter I, of the Code of Federal Regulations is amended as follows:

PART 41—SECURITY FUTURES PRODUCTS

■ 1. The authority citation for part 41 continues to read as follows:

Authority: Sections 206, 251, 252, Pub. L. 106–554, 114 Stat. 2763; 7 U.S.C. 1a, 2, 6f, 6j, 7a–2, 12a; 15 U.S.C. 78g(c)(2).

■ 2. Section 41.11 is amended by revising paragraphs (a)(2)(ii) and (b)(2)(ii)(B) to read as follows:

§ 41.11 Method for determining market capitalization and dollar value of average daily trading volume; application of the definition of narrow-based security index.

(a) * * *

(2) * * *

(ii) The 750 securities with the largest market capitalization shall be identified from the universe of all NMS securities as defined in § 242.600 that are common stock or depositary shares.

(b) * * *

(2) * * *

(ii) * * *

(B) The 675 securities with the largest dollar value of ADTV shall be identified from the universe of all NMS securities as defined in § 242.600 that are common stock or depositary shares.

* * * * *

Dated: July 25, 2005.

By the Commodity Futures Trading Commission.

Jean A. Webb,

Secretary.

Securities and Exchange Commission

■ In accordance with the foregoing, Title 17, Chapter II, of the Code of Federal Regulations is amended as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

■ 1. The authority citation for part 240 continues to read, in part, as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll*, 78mm, 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, and 7201 *et seq.*; and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

■ 2. Section 240.3a55–1 is amended by revising paragraphs (a)(2)(ii) and (b)(2)(ii)(B) to read as follows:

§ 240.3a55–1 Method for determining market capitalization and dollar value of average daily trading volume; application of the definition of narrow-based security index.

(a) * * *

(2) * * *

(ii) The 750 securities with the largest market capitalization shall be identified from the universe of all NMS securities as defined in § 242.600 of this chapter that are common stock or depositary shares.

(b) * * *

(2) * * *

(ii) * * *

(B) The 675 securities with the largest dollar value of ADTV shall be identified from the universe of all NMS securities as defined in § 242.600 of this chapter that are common stock or depositary shares.

* * * * *

Dated: July 25, 2005.

By the Securities and Exchange Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 05–15000 Filed 7–28–05; 8:45 am]

BILLING CODE 8010–01–P; 6351–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

23 CFR Part 1327

[Docket No. NHTSA–04–17326]

RIN 2127–AI45

Procedures for Participating in and Receiving Data From the National Driver Register Problem Driver Pointer System

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

ACTION: Final rule.

SUMMARY: This final rule amends the agency's National Driver Register (NDR) regulations to implement new reporting requirements mandated by the Motor Carrier Safety Improvement Act of 1999 (MCSIA). MCSIA amended the NDR Act to require that a State, before issuing or renewing a motor vehicle operator's license, must verify an individual's eligibility to receive a license through informational checks of both the NDR and the Commercial Driver's License Information System (CDLIS). The final rule amends the NDR regulations to reflect this statutory change.

The final rule also provides an updated listing of the NDR reporting codes in the Appendix to reflect the codes that should be implemented by participating States by September 30, 2005. The final rule clarifies that pointer records reported to the NDR must only regard individuals who have been convicted or whose license has been denied, canceled, revoked, or suspended for one of the offenses identified in the Appendix. Finally, the final rule adds a definition for the term ''employers or prospective employers of motor vehicle operators.''

DATES: The final rule becomes effective on September 27, 2005.

FOR FURTHER INFORMATION CONTACT: For program issues: Mr. Sean McLaurin, Chief, National Driver Register, NPO–124, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366–4800. For legal issues: Mr. Roland (R.T.) Baumann III, Attorney-Advisor, Office of the Chief Counsel, NCC–113, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366–1834.

SUPPLEMENTARY INFORMATION:

I. Background

On December 9, 1999, the Motor Carrier Safety Improvement Act (MCSIA) was signed into law (Pub. L. 106–159, Section 204), creating, in part, a new requirement for States participating in the National Driver Register (NDR). The requirement directed States to request from the Secretary of Transportation information from the NDR and the Commercial Driver License Information System (CDLIS) before issuing a motor vehicle operator's license to an individual or renewing such a license (49 U.S.C. 30304(e)).

In establishing this new requirement, Congress adopted the recommendation of a 1999 study directed by the Office of Motor Carriers of the Federal Highway Administration that reviewed the effectiveness of the Commercial Driver License (CDL) program and its general benefit to highway safety. The study indicated that the CDL program had been very successful in limiting commercial motor vehicle operators to a single license. However, the study also indicated that vulnerabilities continued to exist in enforcing the single license requirement. States that did not check the CDLIS when a CDL holder applied for a non-commercial driver's license (non-CDL) allowed a CDL holder to

apply for a second license without detection. In contravening the single license requirement under the Commercial Motor Vehicle Safety Act of 1986, a commercial motor vehicle operator had the opportunity to spread traffic-related violations among various driver licenses. In response to these concerns, the study recommended that all States modify their licensing procedures to require that all CDL and non-CDL applicants verify records against both the NDR and the CDLIS. (See Commercial Driver License Effectiveness Study, Volume Two, Technical Report, at 24 (Feb. 1999)).

II. Notice of Proposed Rulemaking—Primary Changes

On March 31, 2004, the agency published a notice of proposed rulemaking (NPRM) in the **Federal Register** (69 FR 16853, Mar. 31, 2004), proposing to amend the NDR regulations to reflect the new requirement of MCSIA.

Under Section 30303(a) of Title 49, States are required to notify the Secretary of Transportation (by delegation, the NHTSA Administrator (49 CFR 1.51(e))) of their ''intention to be bound by section 30304'' of Title 49, with notification to be ''in the form and way the Secretary prescribes by regulation.'' (49 U.S.C. 30303(c)). In accordance with this statutory directive, the agency promulgated a regulation setting forth the conditions a State must satisfy to become a participant in the NDR. If the State is judged by the agency to be in compliance with the requirements of the NDR Act of 1982 and 23 CFR 1327.5, it is certified as a participating State. (23 CFR 1327.3(m) and 1327.4(a)). Under the existing system, all 50 States and the District of Columbia provided the required notification, and are currently considered active participants in the NDR.

The NPRM explained that these existing notifications did not account for the statutory changes to Section 30304 (see ''Background'' section above). With the MCSIA-mandated changes, the agency recognized that the earlier notifications no longer reflected an intention by the States to be bound by all provisions of the statutory reporting requirements. From statistical information that identified the type of inquiry submitted to the NDR system, the agency confirmed that as many as fifty percent of the currently participating States were not, in fact, following the amended provisions of Section 30304 that require a check of both the NDR and the CDLIS.

To address this situation, the NPRM proposed to amend 23 CFR 1327.4 to provide that, with each change to 49 U.S.C. 30304, a participating State may be required to submit a new notification to the agency, expressing its intent to be bound by all current requirements of Section 30304. New notifications would only be required when statutory changes affected the participating State's reporting or inquiry requirements under Section 30304 of Title 49. The agency determined that MCSIA's statutory changes were the first changes that necessitated a new notification since the creation of the PDPS. The NPRM also noted that statutory changes involving minor language adjustments or otherwise resulting in no substantive addition to the list of actions that must be carried out by a State to remain an active participant in the NDR would not necessitate a new notification. Under the agency's proposal, a State that failed to provide the required notification would be subject to termination of its participating State status 90 days after receiving a request for a new notification from the agency.

The NPRM also proposed conforming amendments to 23 CFR 1327.5, to set forth the new statutory requirements for convenient reference. The proposed amendments followed the statutory changes made by MCSIA requiring the chief driver licensing official of a State to submit an inquiry to the NDR and the CDLIS before issuing any type of license. The NPRM clarified that issuance of a license includes, but is not limited to, any original, renewal, temporary, or duplicate license. In addition, the NPRM proposed to revise the definition of ''participating State'' under Section 1327.3(m) to conform to the new requirement that participating State status is contingent on the State's compliance with Section 30304 of Title 49 of the United States Code and the agency's implementing regulations.

III. Notice of Proposed Rulemaking—Changes To Clarify or Update Information

A. Proposed Amendment to Section 1327.3

The NPRM recognized that the current regulations use, but do not specifically define, the term ''employers or prospective employers of motor vehicle operators.'' The term is used to describe persons who employ individuals that may be subject to NDR checks. (See 23 CFR 1327.6(c)).

The NPRM proposed a definition for the term ''employers or prospective employers of motor vehicle operators'' that would include only those persons who hire individuals to operate motor vehicles on a regular basis during the normal course of their employment. The proposed definition was intended to reduce burdens to employers by narrowing the class of employees subject to an NDR check. An employer that hired an individual to make regular business deliveries would be covered under this definition, whereas an employer that allowed an employee to use a company-owned vehicle or to rent a vehicle (and receive reimbursement) to attend a business conference or take an occasional business trip would not be covered. Employers meeting the definition of ''employers or prospective employers of motor vehicle operators'' would be allowed to receive NDR information regarding the types of employees covered by the definition, pursuant to the procedures outlined in the regulation.

B. Proposed Amendment to 23 CFR Part 1327.5(a)

The NPRM proposed to add a paragraph in section 1327.5(a), clarifying that pointer records transmitted to the NDR must be based on the violation codes appearing in the Appendix. With this addition, these codes would serve as a comprehensive list of offenses the agency would deem to be proper grounds for establishing a pointer record regarding an individual. If an individual has not been convicted or the individual's driver's license has not been denied, canceled, revoked or suspended for an offense identified in these codes, a pointer record should not be transmitted to the NDR regarding that individual. The NPRM made clear that the agency would contact a participating State responsible for inclusion of a pointer record that is not based on the Appendix codes and request its removal from the NDR system.

C. Proposed Amendment to Appendix A to 23 CFR Part 1327 and Conforming Amendment to 23 CFR 1327.3(g)

The NPRM proposed to amend Appendix A to Part 1327 to update the code list to be consistent with the current AAMVA Code Dictionary (ACD) reporting codes.[1] The NPRM also proposed to divide the Appendix into two parts to make it easy for a participating State to identify what codes correspond to ''for cause'' licensing actions and traffic offense

[1] The NPRM acknowledged that AAMVA is currently revising the ACD. As of the date of publication of this rule, the AAMVA's revision process continues. When it is finalized, the agency will determine whether changes should be made to the Appendix as a result. Any proposed changes will be published in the **Federal Register**.

convictions. In conjunction with these changes, the agency proposed to revise the definition of ''for cause'' under Section 1327.3(g) to conform to the revised Appendix.

IV. Comments

The agency received 10 comments in response to the NPRM—six from State agencies and four from business/professional organizations. The State comments were submitted by the Driver License Division of the Texas Department of Public Safety (TXDPS); the Safety Administration of the Pennsylvania Department of Transportation (PennDOT); the New York State Department of Motor Vehicles (NYSDMV); the State of Washington Department of Licensing (WADOL); the Michigan Department of State (MDS); and the Driver Services Department of the Illinois Office of the Secretary of State (ILSS). The business/professional organization comments were submitted by the American Trucking Associations, Inc. (ATA); Advocates for Highway and Auto Safety (Advocates); the American Association of Motor Vehicle Administrators (AAMVA); and U.S. Investigations Services (USIS).

A. Proposed Amendments to Notification Requirement and Conforming Amendments

PennDOT asserted that Federal law does not allow the agency to require more than just an initial notification of a State's intention to be bound by the reporting requirements of the NDR statute. According to PennDOT, nothing contained in the Federal statute gives the agency the authority to require multiple notifications.

The agency explained in the NPRM that the notifications provided by the States evidencing an intention to be bound by the reporting requirements predate the changes made by MCSIA. At this time, no State has certified its intention to be bound by the requirement to check the NDR and the CDLIS for all license issuances and renewals. The agency further explained in the NPRM that at least 50 percent of the States are not completing the checks required under the Act. Under these circumstances, the agency finds it necessary to create a mechanism for requesting new notifications from participating States. The NDR Act provides the Secretary of Transportation with specific authority to set the ''form and way'' of proper State notification by regulation (49 U.S.C. 30303(c)). This provision invests the Secretary with abundant discretion and we do not agree with the commenter that the agency is prohibited from seeking new notifications when reporting requirements change. To avoid confusion and ensure that the terms ''notification'' and ''certifying'' are used in a consistent manner throughout, we have made slight revisions to the language of 23 CFR 1327.4(c)(1) and (d)(1) from those in the notice of proposed rulemaking and a conforming amendment to 23 CFR 1327.4(c)(2).

Additional comments centered on the MCSIA requirement to check the NDR and the CDLIS before issuing or renewing a motor vehicle operator's license. PennDOT asserted that the requirement to submit an NDR check for a noncommercial license renewal would not further the interests of commercial motor vehicle safety. WADOL claimed that performing these additional checks would require extensive and costly programming changes. ILSS stated that it only accesses the NDR for applicants requesting a CDL or individuals being issued a first-time license. According to ILSS, to implement the MCSIA requirement, Illinois would have to amend current rules, policies, and procedures. Each of these commenters requested that the agency either delay implementation of the rule or withdraw the rule.

These comments represent a fundamental misunderstanding about the MCSIA requirements and the agency's proposed regulation. The requirement to check the NDR and the CDLIS before the issuance or renewal of a motor vehicle operator's license is a statutory requirement that took effect when MCSIA was enacted in 1999. With that enactment, Congress directed that NDR participating States complete these additional checks. The agency has no discretion to alter or extend the time for compliance with a statutory requirement. The reach of this part of the proposed rule is limited to implementing the statutory mandate.[2] Accordingly, we do not adopt the recommendation of these commenters. These statutory requirements should not come as a surprise to participating States. The agency is aware that the organization most closely aligned with the licensing department of individual States, the AAMVA, has been instructing its member States to comply with these requirements since 1999.

The agency received comments and questions from States about its proposed clarification that checks of the NDR and the CDLIS should be made for any original, renewal, temporary, or duplicate license. NYSDMV objected to the clarification and asserted that ''states should have the ability to identify for themselves the issuance and renewal transactions that should require checks of the NDR and the CDLIS.'' MDS asked whether the requirement covers all driver's license applications and whether States can implement these record checks before the effective date of the final rule.

MCSIA intended to close loopholes that existed in licensing programs as a result of not checking both databases before issuing and before renewing a non-CDL license. The requirement to make these inquiries has been a statutory requirement of participating States since the enactment of MCSIA. From that point forward, States participating in the NDR should have been meeting all inquiry requirements. However, in response to the comments, the agency has decided to amend the regulation to make clearer the types of licensing transactions that must result in a check of the NDR and CDLIS databases. An inquiry of both databases must occur when there is either the issuance of an original driver's license, a renewal of driving privileges, or any other licensing transaction that results in the granting or extension of driving privileges. Although this represents the minimum inquiry requirement to qualify as a participating State, the agency continues to encourage States to make a check of the NDR and CDLIS databases a routine part of every licensing transaction.

B. Proposed Revisions to Appendix

The agency received several comments related to the proposed revision to the Appendix. TXDPS and AAMVA pointed out that M09, a code for failure to obey railroad crossing restrictions, appeared only on the withdrawal list and, in error, was not included on the conviction list. The agency agrees with the commenters and has revised the Appendix to include the M09 code on the conviction list. The agency also has reviewed the entire Appendix and made additional changes as a result of ongoing efforts by AAMVA to revise the ACD. We anticipate that additional changes will be necessary as AAMVA works toward finalizing and implementing a revised set of ACD codes by September 30, 2005. Our expectation is that all participating

[2] This portion of the final rule implements a Federal statutory provision that is considered self-executing and would be a requirement of any participating State without the need for a corresponding regulation. Although the agency is revising its regulation to note this change, we expect participating States to achieve full compliance with these types of statutory requirements on their own and without the need for regulatory changes in the future.

States will use the revised Appendix by this date as well. We will afford some flexibility for States to continue using the older codes up to the implementation deadline.

C. Proposed Definition of Employer

The agency received one comment about its proposed definition of ''employers or prospective employers of motor vehicle operators.'' Advocates claimed that the proposed definition was too vague to be helpful to States attempting to determine proper access for businesses and that the agency should adopt bright-line definitions for demarcating the class of employers who have both the right and the responsibility to check employee driving records. According to Advocates, the proposed definition would result in abuses by employers who improperly access current or prospective employees' driving records and employers who exploit the vagueness inherent in the definition to avoid the responsibility to check NDR records.

The proposed definition relates to a provision of statute granting permissive access to the NDR (49 U.S.C. 30305(b)(2)). The statutory provision does not create a duty for an employer of a motor vehicle operator to complete an NDR check. The term ''employers or prospective employers of motor vehicle operators'' has not been defined since the statute was created in 1982. Since that time, the agency has received informal requests for guidance concerning the types of employers that should be given access to the NDR. The proposed definition is an effort to provide that guidance. It is not intended to provide an exhaustive articulation of the types of work requirements that would permit an employer access.

The potential for abuse cited by the commenter is not apparent to the agency. The provision at issue concerns permissible access to the NDR—it does not create a responsibility to submit an NDR inquiry. In addition, regulatory procedures already in place require that any employer or prospective employer receive the consent of the employee before conducting an NDR check. Under these conditions, there appears little chance for employers to access improperly their employees' NDR records. The agency has determined that no changes to the proposed definition are necessary.

D. General Implementation Issues

The agency received several questions from AAMVA regarding implementation of the MCSIA-mandated changes and the rulemaking changes in general.

AAMVA asked whether the PDPS will adopt messages added to CDLIS history transaction requests. The agency is planning to adapt the current structure of the PDPS reporting format to account for and accept information added to CDLIS history request transactions.

AAMVA also asked whether States would be required to complete a full-structured test and, in addition, complete a clean file of their existing submitted pointer records as a result of the rulemaking. (A full-structured test refers to the process of checking a State's ability to submit inquiries to and receive information from the NDR system without problems. A clean file refers a State's complete removal of all submitted pointer records from the NDR system.) The agency believes that there would be only a small benefit if participating States complete a full-structured test or prepare a clean file at this time. Although the frequency and amount of inquiries will increase as State compliance with the statutory requirements rises, the basic inquiry and response function of the system is not changed by the rulemaking. The agency will continue to monitor State usage, and if service degradation is detected in a State, a full-structured test may be required. Also, if pointer records not based on the Appendix are routinely submitted to the agency by a participating State, the agency may require that State to complete a clean file as an assurance that statutory requirements are being met.

AAMVA inquired as to how the agency intends to ensure that jurisdictions use proper codes and add pointer records for only the required legal reasons. Although the agency has not formally stated in regulation its policy of removing pointer records not based on the NDR reporting codes until this rulemaking, the agency has enforced this policy in practice. Our expectation is that participating States will take care to use only appropriate codes. If a jurisdiction is contacted on multiple occasions due to the use of codes not appearing in the Appendix, the agency may require the jurisdiction to prepare a complete clean file of its submitted records.

E. Federalism Concerns

The agency received one comment citing Federalism concerns. Specifically, PennDOT stated that the requirement to check the NDR for non-commercial license renewals usurps the traditional licensing authority of the State. Additionally, PennDOT asserted that the limitation on the types of suspensions reported to the NDR interferes with Pennsylvania's duties under its own law to deny licensure to drivers with any type of suspension in another State.

Under Executive Order 13132, the agency may not issue a regulation with Federalism implications that imposes substantial direct compliance costs and that is not required by statute unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, the agency consults with State and local governments, or the agency consults with State and local officials early in the process of developing the proposed regulation. The agency also may not issue a regulation with Federalism implications that preempts State law unless the agency consults with State and local officials early in the process of developing the proposed regulation.

The requirement to check the NDR for non-commercial license renewals is a statutory requirement. The rulemaking does not alter this requirement or require that a participating State take actions different than those already required by the statute. Although the regulation requires that States submit new notifications acknowledging the requirements of participation in the NDR, the notification requirement does not preempt State law or set conditions on a State's licensing decision. The Federalism implications in Executive Order 13132 are not present in this situation.

Similarly, the content of the NDR database is governed by the statute. The NDR was never intended to address more than transportation-related issues. The statute provides access to States for the purpose of driver licensing, driver improvement, and transportation safety and limits reportable information to convictions for motor vehicle-related offenses and for cause license suspensions. Within this statutory framework, the agency's rule provides an updated Appendix that constitutes all violation information submitted to the NDR. Although participating States may not use the NDR system to share non-NDR information, the rule does not prevent States from using other mechanisms to submit and receive non-NDR information of their choosing. Nothing in this rule prevents Pennsylvania from maintaining any information necessary to comply with State law. Under these circumstances, the Federalism concerns referred to in Executive Order 13132 are not implicated.

V. Statutory Basis for Final Rule

This final rule implements reporting requirements mandated by the Motor

Carrier Safety Improvement Act of 1999 (MCSIA) (Pub. L. 106–159, Section 204).

VI. Regulatory Analyses and Notices

Executive Order 12988 (Civil Justice Reform)

This final rule will not have any preemptive or retroactive effect. This action 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.

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

Executive Order 12866, ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993) provides for making determinations on whether a regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The agency has considered the impact of the rulemaking action under Executive Order 12866 and determined that it is not significant. The rulemaking action is also treated as not significant under the Department of Transportation's regulatory policies and procedures. OMB has not reviewed this notice under Executive Order 12866.

In this document, the agency revises the NDR implementing regulations to conform to specific statutory requirements. Checks are required of both the NDR and CDLIS databases before issuance or renewal of a motor vehicle operator's license. Although the statutory requirements increase the number of inquiries that States are required to make and the number of responses they receive as a result, the agency believes that the additional checks and the revisions identified in this regulation will not have a significant economic effect on the States. The statutorily required checks of the CDLIS (in addition to the NDR) for renewals of CDLs and non-CDLs simply add another verification in a process that States already perform when first issuing a CDL. Additional maintenance fees associated with access to the CDLIS should not occur as States already pay a fee based on the number of CDL records on the CDLIS. The final rule also requires that States submit a new notification of an intention to be bound by the reporting requirements of the statute in the event of a significant statutory change. The process of signing and submitting a new notification will be a rare occurrence and will not result in significant costs to the States.

The agency believes that the impacts of this rulemaking will be minimal. Consequently, a full regulatory evaluation has not been prepared.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (Public Law 96–354, 5 U.S.C. 601–612) requires an agency to review regulations to assess their impact on small entities unless the agency determines that a rule is not expected to have a significant impact on a substantial number of small entities. The agency has considered the effects of this rulemaking action under the Regulatory Flexibility Act. Employers who hire motor vehicle operators may qualify as small businesses. This document, however, does not change the procedure that employers must use to request a driver license check of an employee or prospective employee. Employers would still be required to contact the respective State chief driver licensing official. Therefore, I hereby certify that the rulemaking action would not have a significant impact on a substantial number of small entities.

Paperwork Reduction Act

There are reporting requirements contained in the regulation that the final rule amends that are considered to be information collection requirements, as that term is defined by the Office of Management and Budget (OMB) in 5 CFR Part 1320. These requirements have been submitted previously to and approved by OMB, pursuant to the Paperwork Reduction Act (44 U.S.C. 3500, *et seq.*), through July 30, 2006 under OMB No. 2127–0001.

For the following reasons, nothing in this final rule adds to the collection of information burden that is approved by OMB under Clearance No. 2127–0001. Section 1327.5(a)(2) may reduce collection of information burdens on States because it includes new language clarifying the scope of the collection—that State are not to transmit reports on individuals unless that individual has had his or her motor vehicle operator's license denied, canceled, revoked, or suspended for cause as represented by codes in Appendix A, Part I, or been convicted of a motor vehicle-related offense as represented by codes in Appendix, Part II. After Section 1327.5(a)(2) takes effect, States will be less likely to transmit reports that will ultimately not be included in the National Driver Register.

National Environmental Policy Act

The agency has reviewed this rulemaking action for the purposes of the National Environmental Policy Act (42 U.S.C. 4321, *et. seq.*) and has determined that it would not have a significant impact on the quality of the human environment.

The Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531) requires Federal agencies to prepare a written assessment of the costs, benefits, and other effects of proposed rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. In response to the proposed rule, a few States supplied cost estimates for compliance with the MCSIA requirement. Assuming the accuracy of these estimates and extrapolating the results to all participating States based on State population, the total cost to make checks of the CDLIS and the NDR before issuing or renewing a license would not result in expenditures that exceed $100 million on an annual basis. This rule does not require an assessment under this law.

Executive Order 13132 (Federalism)

Executive Order 13132 requires the agency 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.'' The Executive Order defines ''policies that have Federalism implications'' 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 various levels of government.''

The agency has analyzed this rulemaking action in accordance with the principles and criteria set forth in Executive Order 13132 and has determined that the final rule does not have sufficient Federalism implications to warrant consultation with State and local officials or the preparation of a Federalism summary impact statement. Moreover, the final rule does not preempt any State law or regulation or affect the ability of States to discharge traditional State government functions. Section F (above), entitled ''Federalism,'' responds directly to a comment the agency received citing Federalism concerns.

Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments)

The agency has analyzed this rulemaking action under Executive Order 13175, and believes that this final rule would not have a substantial direct effect on one or more Indian tribes, would not impose substantial direct compliance costs on Indian tribal governments, and would not preempt tribal law. Therefore, a tribal summary impact statement is not required.

Plain Language

Executive Order 12866 requires each agency to write all rules in plain language. Application of the principles of plain language includes consideration of the following questions:

—Have we organized the material to suit the public's needs?

—Are the requirements in the rule clearly stated?

—Does the rule contain technical language or jargon that is not clear?

—Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?

—Would more (but shorter) sections be better?

—Could we improve clarity by adding tables, lists, or diagrams?

—What else could we do to make this rulemaking easier to understand?

If you have any comments about the Plain Language implications of this final rule, please address them to the person listed in the **FOR FURTHER INFORMATION CONTACT** heading.

Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory section listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross-reference this section with the Unified Agenda.

List of Subjects in 23 CFR Part 1327

Highway safety, Intergovernmental relations, and Reporting and recordkeeping requirements

■ In consideration of the foregoing, the agency amends title 23 of CFR Part 1327 as follows:

PART 1327—PROCEDURES FOR PARTICIPATING IN AND RECEIVING INFORMATION FROM THE NATIONAL DRIVER REGISTER PROBLEM DRIVER POINTER SYSTEM

■ 1. The authority citation for part 1327 continues to read as follows:

Authority: Pub. L. 97–364, 96 Stat. 1740, as amended (49 U.S.C. 30301 *et seq.*); delegation of authority at 49 CFR 1.50.

■ 2. Amend § 1327.3 by redesignating paragraphs (g) through (x) as paragraphs (h) through (y) and by adding new paragraph (g) and revising newly redesignated paragraphs (h) and (n) to read as follows:

§ 1327.3 Definitions.

* * * * *

(g) *Employers or Prospective Employers of Motor Vehicle Operators* means persons that hire one or more individuals to operate motor vehicles on a regular basis during their normal course of employment.

(h) *For Cause* as used in § 1327.5(a) means that an adverse action taken by a State against an individual was based on a violation listed in Appendix A, Part I, an Abridged Listing of the American Association of Motor Vehicle Administrators (AAMVA) Violations Exchange Code, which is used by the NDR for recording license denials and withdrawals.

* * * * *

(n) *Participating State* means a State that has notified the agency of its intention to participate in the PDPS and has been certified by the agency as being in compliance with the requirements of Section 30304 of Title 49, United States Code and § 1327.5 of this part.

* * * * *

■ 3. Amend § 1327.4 by revising paragraphs (c)(1) and (c)(2) and adding new paragraph (d) to read as follows:

§ 1327.4 Certifications, termination and reinstatement procedures.

* * * * *

(c) *Reinstatement.* (1) The chief driver licensing official of a State that wishes to be reinstated as a participating State in the NDR under the PDPS shall send a letter notifying NHTSA that the State wishes to be reinstated as a participating State and certifying that the State intends to be bound by the requirements of Section 30304 of Title 49, United States Code and § 1327.5. The letter shall also describe the changes necessary to meet the statutory and regulatory requirements of PDPS.

(2) NHTSA will acknowledge receipt of the State's notification within 20 days after receipt.

* * * * *

(d) *New Notification.* (1) NHTSA may, in its discretion, require in writing that a participating State submit a new notification, certifying that it intends to be bound by the requirements of Section 30304 of Title 49, United States Code and § 1327.5. The agency will exercise its discretion to require this notification when statutory changes have altered a participating State's reporting or inquiry requirements under Section 30304 of Title 49, United States Code.

(2) After receiving a written request from NHTSA under paragraph (d)(1) of this section, a participating State will have 90 days to submit the requested notification. If a participating State does not submit the requested notification within the 90-day time period, NHTSA will send a letter to the chief driver licensing official of a State canceling its status as a participating State.

■ 4. Amend § 1327.5 by redesignating paragraphs (a)(2) through (a)(4) as paragraphs (a)(3) through (a)(5) and adding new paragraph (a)(2) and by revising paragraph (b)(1) to read as follows:

§ 1327.5 Conditions for becoming a participating State.

(a) * * *

(2) A report shall not be transmitted by the chief driver licensing official of a participating State, regarding an individual, unless that individual has had his or her motor vehicle operator's license denied, canceled, revoked, or suspended for cause as represented by the codes in appendix A, part I, of this part, or been convicted of a motor vehicle-related offense as represented by the codes in appendix A, part II, of this part. Unless the report transmitted to the NDR is based on these codes, NHTSA will contact the participating State responsible for the record and request its removal from the NDR.

* * * * *

(b) * * *

(1) The chief driver licensing official of a participating State shall submit an inquiry to both the NDR and the Commercial Driver's License Information System for each driver license applicant before issuing a license to that applicant. The issuance of a license includes but is not limited to any original, renewal, temporary, or duplicate license that results in a grant or extension of driving privileges in a participating State.

* * * * *

■ 5. Revise Appendix A to part 1327 to read as follows:

Appendix A to Part 1327—Abridged Listing of the American Association of Motor Vehicle Administrators Violations Exchange Code, Used by the NDR for Recording Driver License Denials, Withdrawals, and Convictions of Motor Vehicle-Related Offenses

Code

Part I—For Cause Withdrawals

A04 Driving under the influence of alcohol with BAC at or over .04
A08 Driving under the influence of alcohol with BAC at or over .08
A10 Driving under the influence of alcohol with BAC at or over .10
A11 Driving under the influence of alcohol with BAC at or over ____ (detail field required)
A12 Refused to submit to test for alcohol—Implied Consent Law
A20 Driving under the influence of alcohol or drugs
A21 Driving under the influence of alcohol
A22 Driving under the influence of drugs
A23 Driving under the influence of alcohol and drugs
A24 Driving under the influence of medication not intended to intoxicate
A25 Driving while impaired
A26 Drinking alcohol while operating a vehicle
A31 Illegal possession of alcohol
A33 Illegal possession of drugs (controlled substances)
A35 Possession of open alcohol container
A41 Driver violation of ignition interlock or immobilization device
A50 Motor vehicle used in the commission of a felony involving the manufacturing, distributing, or dispensing of a controlled substance
A60 Underage Convicted of Drinking and Driving at .02 or higher BAC
A61 Underage Administrative Per Se—Drinking and Driving at .02 or higher BAC
A90 Administrative Per Se for .10 BAC
A94 Administrative Per Se for .04 BAC
A98 Administrative Per Se for .08 BAC
B01 Hit and run—failure to stop and render aid after accident
B02 Hit and run—failure to stop and render aid after accident—Fatal accident
B03 Hit and run—failure to stop and render aid after accident—Personal injury accident
B04 Hit and run—failure to stop and render aid after accident—Property damage accident
B05 Leaving accident scene before police arrive
B06 Leaving accident scene before police arrive—Fatal accident
B07 Leaving accident scene before police arrive—Personal injury accident
B08 Leaving accident scene before police arrive—Property damage accident
B14 Failure to reveal identity after fatal or personal injury accident
B19 Driving while out of service order is in effect and transporting 16 or more passengers including the driver and/or transporting hazardous materials that require a placard
B20 Driving while license withdrawn
B21 Driving while license barred
B22 Driving while license canceled
B23 Driving while license denied
B24 Driving while license disqualified
B25 Driving while license revoked
B26 Driving while license suspended
B27 General, driving while an out of service order is in effect (for violations not covered by B19)
B41 Possess or provide counterfeit or altered driver license (includes DL, CDL, and Instruction Permit) or ID
B51 Expired or no driver license (includes DL, CDL, and Instruction Permit)
B56 Driving a CMV without obtaining a CDL
B63 Failed to file future proof of financial responsibility
B91 Improper classification or endorsement on driver license (includes DL, CDL, and Instruction Permit)
D02 Misrepresentation of identity or other facts on application for driver license (includes DL, CDL, and Instruction Permit)
D06 Misrepresentation of identity or other facts to obtain alcohol
D07 Possess multiple driver licenses (includes DL, CDL, and Instruction Permit)
D16 Show or use improperly—Driver license (includes DL, CDL, and Instruction Permit)
D27 Violate limited license conditions
D29 Violate restrictions of driver license (includes DL, CDL, and Instruction Permit)
D35 Failure to comply with financial responsibility law
D38 Failure to post security or obtain release from liability
D39 Unsatisfied judgment
D45 Failure to appear for trial or court appearance
D53 Failure to make required payment of fine and costs
D56 Failure to answer a citation, pay fines, penalties and/or costs related to the original violation
D72 Inability to control vehicle
D74 Operating a motor vehicle improperly because of drowsiness
D75 Operating a motor vehicle improperly due to physical or mental disability
D78 Perjury about the operation of a motor vehicle
E03 Operating without HAZMAT safety equipment as required by law
F02 Child or youth restraint not used properly as required
F03 Motorcycle safety equipment not used properly as required
F04 Seat belt not used properly as required
F05 Carrying unsecured passengers in open area of vehicle
F06 Improper operation of or riding on a motorcycle
M09 Failure to obey railroad crossing restrictions
M10 For all drivers, failure to obey a traffic control device or the directions of an enforcement official at a railroad-highway grade crossing
M20 For drivers who are not required to always stop, failure to slow down at a railroad-highway grade crossing and check that tracks are clear of approaching train
M21 For drivers who are not required to always stop, failure to stop before reaching tracks at a railroad-highway grade crossing when the tracks are not clear
M22 For drivers who are always required to stop, failure to stop as required before driving onto railroad-highway grade crossing
M23 For all drivers, failing to have sufficient space to drive completely through the railroad-highway grade crossing without stopping
M24 For all drivers, failing to negotiate a railroad-highway grade crossing because of insufficient undercarriage clearance
M80 Reckless, careless, or negligent driving
M81 Careless driving
M82 Inattentive driving
M83 Negligent driving
M84 Reckless driving
S01 01–05 > Speed limit (detail optional)
S06 06–10 > Speed limit (detail optional)
S15 Speeding 15 mph or more above speed limit (detail optional)
S16 16–20 > Speed limit (detail optional)
S21 21–25 > Speed limit (detail optional)
S26 26–30 > Speed limit (detail optional)
S31 31–35 > Speed limit (detail optional)
S36 36–40 > Speed limit (detail optional)
S41 41+ > Speed limit (detail optional)
S51 01–10 > Speed limit (detail optional)
S71 21–30 > Speed limit (detail optional)
S81 31–40 > Speed limit (detail optional)
S91 41+ > Speed limit (detail optional)
S92 Speeding—Speed limit and actual speed (detail required)
S93 Speeding
S94 *Prima Facie* speed violation or driving too fast for conditions
S95 Speed contest (racing) on road open to traffic
S97 Operating at erratic or suddenly changing speeds
U01 Fleeing or evading police or roadblock
U02 Resisting arrest
U03 Using a motor vehicle in connection with a felony (not traffic offense)
U05 Using a motor vehicle to aid and abet a felon
U06 Vehicular assault
U07 Vehicular homicide
U08 Vehicular manslaughter
U09 Negligent homicide while operating a CMV
U10 Causing a fatality through the negligent operation of a CMV
U31 Violation resulting in fatal accident
W01 Accumulation of convictions (including point systems and/or being judged a habitual offender or violator)
W14 Physical or mental disability
W20 Unable to pass DL test(s) or meet qualifications
W30 Two serious violations within three years
W31 Three serious violations within three years
W40 The accumulation of two or more major offenses
W41 An additional major offense after reinstatement
W50 The accumulation of two out-of-service order general violations (violations not covered by W51) within ten years
W51 The accumulation of two out-of-service order violations within ten years

while transporting 16 or more passengers, including the driver and/or transporting hazardous materials that require a placard
W52 The accumulation of three or more out-of-service order violations within ten years
W60 The accumulation of two RRGC violations within three years.
W61 The accumulation of three or more RRGC violations within three years.
W70 Imminent hazard

Part II—Convictions

A04 Driving under the influence of alcohol with BAC at or over .04
A08 Driving under the influence of alcohol with BAC at or over .08
A10 Driving under the influence of alcohol with BAC at or over .10
A11 Driving under the influence of alcohol with BAC at or over __ (detail field required)
A12 Refused to submit to test for alcohol—Implied Consent Law
A20 Driving under the influence of alcohol or drugs
A21 Driving under the influence of alcohol
A22 Driving under the influence of drugs
A23 Driving under the influence of alcohol and drugs
A24 Driving under the influence of medication not intended to intoxicate
A25 Driving while impaired
A26 Drinking alcohol while operating a vehicle
A31 Illegal possession of alcohol
A33 Illegal possession of drugs (controlled substances)
A35 Possession of open alcohol container
A41 Driver violation of ignition interlock or immobilization device
A50 Motor vehicle used in the commission of a felony involving the manufacturing, distributing, or dispensing of a controlled substance
A60 Underage Convicted of Drinking and Driving at .02 or higher BAC
A61 Underage Administrative Per Se—Drinking and Driving at .02 or higher BAC
A90 Administrative Per Se for .10 BAC
A94 Administrative Per Se for .04 BAC
A98 Administrative Per Se for .08 BAC
B01 Hit and run—failure to stop and render aid after accident
B02 Hit and run—failure to stop and render aid after accident—Fatal accident
B03 Hit and run—failure to stop and render aid after accident—Personal injury accident
B04 Hit and run—failure to stop and render aid after accident—Property damage accident
B05 Leaving accident scene before police arrive
B06 Leaving accident scene before police arrive—Fatal accident
B07 Leaving accident scene before police arrive—Personal injury accident
B08 Leaving accident scene before police arrive—Property damage accident
B14 Failure to reveal identity after fatal or personal injury accident
B19 Driving while out of service order is in effect and transporting 16 or more passengers including the driver and/or transporting hazardous materials that require a placard
B20 Driving while license withdrawn
B21 Driving while license barred
B22 Driving while license canceled
B23 Driving while license denied
B24 Driving while license disqualified
B25 Driving while license revoked
B26 Driving while license suspended
B27 General, driving while an out of service order is in effect (for violations not covered by B19)
B41 Possess or provide counterfeit or altered driver license (includes DL, CDL, and Instruction Permit) or ID
B51 Expired or no driver license (includes DL, CDL, and Instruction Permit)
B56 Driving a CMV without obtaining a CDL
B91 Improper classification or endorsement on driver license (includes DL, CDL, and Instruction Permit)
D02 Misrepresentation of identity or other facts on application for driver license (includes DL, CDL, and Instruction Permit)
D06 Misrepresentation of identity or other facts to obtain alcohol
D07 Possess multiple driver licenses (includes DL, CDL, and Instruction Permit)
D16 Show or use improperly—Driver license (includes DL, CDL, and Instruction Permit)
D27 Violate limited license conditions
D29 Violate restrictions of driver license (includes DL, CDL, and Instruction Permit)
D72 Inability to control vehicle
D78 Perjury about the operation of a motor vehicle
E03 Operating without HAZMAT safety equipment as required by law
M09 Failure to obey railroad crossing restrictions
M10 For all drivers, failure to obey a traffic control device or the directions of an enforcement official at a railroad-highway grade crossing
M20 For drivers who are not required to always stop, failure to slow down at a railroad-highway grade crossing and check that tracks are clear of approaching train.
M21 For drivers who are not required to always stop, failure to stop before reaching tracks at a railroad-highway grade crossing when the tracks are not clear
M22 For drivers who are always required to stop, failure to stop as required before driving onto railroad-highway grade crossing
M23 For all drivers, failing to have sufficient space to drive completely through the railroad-highway grade crossing without stopping
M24 For all drivers, failing to negotiate a railroad-highway grade crossing because of insufficient undercarriage clearance
M80 Reckless, careless, or negligent driving
M81 Careless driving
M82 Inattentive driving
M83 Negligent driving
M84 Reckless driving
S95 Speed contest (racing) on road open to traffic
U07 Vehicular homicide
U08 Vehicular manslaughter
U09 Negligent homicide while operating a CMV
U10 Causing a fatality through the negligent operation of a CMV
U31 Violation resulting in fatal accident

Issued on: July 25, 2005.

Jeffrey W. Runge,

Administrator.

[FR Doc. 05–14971 Filed 7–28–05; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 301

[TD 9216]

RIN 1545–BD06

Treatment of a Stapled Foreign Corporation under Sections 269B and 367(b)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations concerning the definition and tax treatment of a stapled foreign corporation, which generally is treated for tax purposes as a domestic corporation under section 269B of the Internal Revenue Code.

DATES: *Effective Date:* These regulations are effective on July 29, 2005.

Applicability Dates: For dates of applicability, see § 1.269B–1(g).

FOR FURTHER INFORMATION CONTACT: Richard L. Osborne at (202) 435–5230 or Robert W. Lorence at (202) 622–3918 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

On September 7, 2004, the IRS and Treasury Department published in the **Federal Register** a notice of proposed rulemaking [REG–101282–04; 2004–42 I.R.B. 698; 69 FR 54067] under sections 269B and 367(b) of the Internal Revenue Code (Code). The proposed regulations provide guidance concerning the definition and tax treatment of a stapled foreign corporation, which generally is treated for tax purposes as a domestic corporation under section 269B of the Code. The proposed regulations are finalized here without modification.

Explanation of Provisions and Summary of Comments

Section 269B(a)(1) provides that, if a domestic corporation and a foreign corporation are stapled entities, the foreign corporation will be treated as a domestic corporation for U.S. Federal income tax purposes, unless otherwise provided in regulations. A domestic and a foreign corporation are stapled entities

if more than 50 percent in value of the beneficial ownership in each corporation consists of stapled interests. Interests are stapled if, by reason of form of ownership, restrictions on transfer, or other terms and conditions, in connection with the transfer of one of such interests, the other interests are also transferred or required to be transferred.

The IRS and Treasury Department received only one written comment with respect to the proposed regulations under section 269B. The comment requests guidance on the potential application of the regulations to so-called *dual listed corporations* (also referred to as *dual company structures* or *virtual mergers*). As described in the comment, dual listed corporations typically are two separately traded public corporations that enter into various equalization and voting agreements, with the result that the operations of each company generally are managed through a common governance structure. The comment provides that the structure does not involve an actual shareholder level exchange of shares, and that the companies remain separately traded, but that by reason of the equalization and voting agreements, the shares in each company generally reflect the combined economics of the two companies. The comment also indicates that these dual listed structures are generally motivated by non-tax business reasons (including avoiding the adverse market effect known as the *flowback of shares* that can occur in cross border acquisitions).

The commentators state that they are not aware of a dual listed structure involving a domestic corporation and a foreign corporation, but nonetheless believe that such a transaction is a possibility. Further, the commentators believe that section 269B and the regulations should not be interpreted to apply to such a dual listed structure. Accordingly, the commentators request that the final regulations (1) provide that the voting arrangements that are part of these transactions do not involve the stapling of *beneficial ownership* within the meaning of section 269B; and (2) provide a de minimis exception to the *aggregate* rule of § 1.269B–1(b)(1) of the proposed regulations.

After consideration of the comment discussed above, the IRS and the Treasury Department have decided at this time to adopt the proposed regulations as final regulations without modification. However, the IRS and the Treasury Department believe that further study of dual listed structures is warranted and request more detailed comments on the application of section 269B and the underlying regulations to these structures, including discussion of particular facts and circumstances that should and should not be considered, in regard to each corporation's beneficial ownership for purposes of determining whether the dual listed corporations are stapled entities. These comments should take into account the need to protect the government's interests in this area, particularly in light of the policies underlying section 269B and the recent enactment of section 7874, relating to rules applicable to expatriated entities and their foreign parent corporations. Consideration also should be given to appropriate limitations on any proposed exceptions. Pending the issuance of any further published guidance, the IRS will consider the application of section 269B and the underlying regulations to dual listed structures on a case by case basis.

Further, the IRS and Treasury Department remain concerned about 10-percent shareholders interposing entities in order to avoid collection under § 1.269B–1(f) of the final regulations. Accordingly, the final regulations retain the reserved section for rules regarding tax assessment and collection from 10-percent indirect owners of stapled foreign corporations. The IRS and Treasury Department will continue to consider such situations and request comments on how to address the issue in subsequent guidance.

Special Analyses

The IRS and the Treasury Department have determined that the adoption of these regulations is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and that because this regulation does not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Richard L. Osborne, of the Office of Associate Chief Counsel (International). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting, and recordkeeping requirements.

26 CFR Part 301

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

Adoption of Amendments to the Regulations

■ Accordingly, 26 CFR parts 1 and 301 are amended as follows:

PART 1—INCOME TAXES

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

Authority: 26 U.S.C. 7805 * * *
Section 1.269B(b)–1 also issued under 26 U.S.C. 269B(b).

■ **Par. 2.** Section 1.269B–1 is added to read as follows:

§ 1.269B–1 Stapled foreign corporations.

(a) *Treatment as a domestic corporation*—(1) *General rule.* Except as otherwise provided, if a foreign corporation is a stapled foreign corporation within the meaning of paragraph (b)(1) of this section, such foreign corporation will be treated as a domestic corporation for U.S. Federal income tax purposes. Accordingly, for example, the worldwide income of such corporation will be subject to the tax imposed by section 11. For application of the branch profits tax under section 884, and application of sections 871(a), 881, 1441, and 1442 to dividends and interest paid by a stapled foreign corporation, see §§ 1.884–1(h) and 1.884–4(d).

(2) *Foreign owned exception.* Paragraph (a)(1) of this section will not apply if a foreign corporation and a domestic corporation are stapled entities (as provided in paragraph (b) of this section) and such foreign and domestic corporations are foreign owned within the meaning of this paragraph (a)(2). A corporation will be treated as foreign owned if it is established to the satisfaction of the Commissioner that United States persons hold directly (or indirectly applying section 958(a)(2) and (3) and section 318(a)(4)) less than 50 percent of the total combined voting power of all classes of stock entitled to vote and less than 50 percent of the total value of the stock of such corporation. For the consequences of a stapled foreign corporation becoming or ceasing to be foreign owned, therefore converting its

status as either a foreign or domestic corporation within the meaning of this paragraph (a)(2), see paragraph (c) of this section.

(b) *Definition of a stapled foreign corporation*—(1) *General rule.* A foreign corporation is a stapled foreign corporation if such foreign corporation and a domestic corporation are stapled entities. A foreign corporation and a domestic corporation are stapled entities if more than 50 percent of the aggregate value of each corporation's beneficial ownership consists of interests that are stapled. In the case of corporations with more than one class of stock, it is not necessary for a class of stock representing more than 50 percent of the beneficial ownership of the foreign corporation to be stapled to a class of stock representing more than 50 percent of the beneficial ownership of the domestic corporation, provided that more than 50 percent of the aggregate value of each corporation's beneficial ownership (taking into account all classes of stock) are in fact stapled. Interests are stapled if a transferor of one or more interests in one entity is required, by form of ownership, restrictions on transfer, or other terms or conditions, to transfer interests in the other entity. The determination of whether interests are stapled for this purpose is based on the relevant facts and circumstances, including, but not limited to, the corporations' by-laws, articles of incorporation or association, and stock certificates, shareholder agreements, agreements between the corporations, and voting trusts with respect to the corporations. For the consequences of a foreign corporation becoming or ceasing to be a stapled foreign corporation (*e.g.*, a corporation that is no longer foreign owned) under this paragraph (b)(1), see paragraph (c) of this section.

(2) *Related party ownership rule.* For purposes of determining whether a foreign corporation is a stapled foreign corporation, the Commissioner may, at his discretion, treat interests that otherwise would be stapled interests as not being stapled if the same person or related persons (within the meaning of section 267(b) or 707(b)) hold stapled interests constituting more than 50 percent of the beneficial ownership of both corporations, and a principal purpose of the stapling of those interests is the avoidance of U.S. income tax. A stapling of interests may have a principal purpose of tax avoidance even though the tax avoidance purpose is outweighed by other purposes when taken together.

(3) *Example.* The principles of paragraph (b)(1) of this section are illustrated by the following example:

Example. USCo, a domestic corporation, and FCo, a foreign corporation, are publicly traded companies, each having two classes of stock outstanding. USCo's class A shares, which constitute 75% of the value of all beneficial ownership in USCo, are stapled to FCo's class B shares, which constitute 25% of the value of all beneficial ownership in F Co. USCo's class B shares, which constitute 25% of the value of all beneficial ownership in USCo, are stapled to FCo class A shares, which constitute 75% of the value of all beneficial ownership in FCo. Because more than 50% of the aggregate value of the stock of each corporation is stapled to the stock of the other corporation, USCo and FCo are stapled entities within the meaning of section 269B(c)(2).

(c) *Changes in domestic or foreign status.* The deemed conversion of a foreign corporation to a domestic corporation under section 269B is treated as a reorganization under section 368(a)(1)(F). Similarly, the deemed conversion of a corporation that is treated as a domestic corporation under section 269B to a foreign corporation is treated as a reorganization under section 368(a)(1)(F). For the consequences of a deemed conversion, including the closing of a corporation's taxable year, see §§ 1.367(a)–1T(e), (f) and 1.367(b)–2(f).

(d) *Includible corporation*—(1) Except as provided in paragraph (d)(2) of this section, a stapled foreign corporation treated as a domestic corporation under section 269B nonetheless is treated as a foreign corporation in determining whether it is an includible corporation within the meaning of section 1504(b). Thus, for example, a stapled foreign corporation is not eligible to join in the filing of a consolidated return under section 1501, and a dividend paid by such corporation is not a qualifying dividend under section 243(b), unless a valid section 1504(d) election is made with respect to such corporation.

(2) A stapled foreign corporation is treated as a domestic corporation in determining whether it is an includible corporation under section 1504(b) for purposes of applying §§ 1.904(i)–1 and 1.861–11T(d)(6).

(e) *U.S. treaties*—(1) A stapled foreign corporation that is treated as a domestic corporation under section 269B may not claim an exemption from U.S. income tax or a reduction in U.S. tax rates by reason of any treaty entered into by the United States.

(2) The principles of this paragraph (e) are illustrated by the following example:

Example. FCo, a Country X corporation, is a stapled foreign corporation that is treated as a domestic corporation under section 269B. FCo qualifies as a resident of Country X pursuant to the income tax treaty between the United States and Country X. Under such treaty, the United States is permitted to tax business profits of a Country X resident only to the extent that the business profits are attributable to a permanent establishment of the Country X resident in the United States. While FCo earns income from sources within and without the United States, it does not have a permanent establishment in the United States within the meaning of the relevant treaty. Under paragraph (e)(1) of this section, however, FCo is subject to U.S. Federal income tax on its income as a domestic corporation without regard to the provisions of the U.S.-Country X treaty and therefore without regard to the fact that FCo has no permanent establishment in the United States.

(f) *Tax assessment and collection procedures*—(1) *In general.* (i) Any income tax imposed on a stapled foreign corporation by reason of its treatment as a domestic corporation under section 269B (whether such income tax is shown on the stapled foreign corporation's U.S. Federal income tax return or determined as a deficiency in income tax) shall be assessed as the income tax liability of such stapled foreign corporation.

(ii) Any income tax assessed as a liability of a stapled foreign corporation under paragraph (f)(1)(i) of this section shall be considered as having been properly assessed as an income tax liability of the stapled domestic corporation (as defined in paragraph (f)(4)(i) of this section) and all 10-percent shareholders of the stapled foreign corporation (as defined in paragraph (f)(4)(ii) of this section). The date of such deemed assessment shall be the date the income tax liability of the stapled foreign corporation was properly assessed. The Commissioner may collect such income tax from the stapled domestic corporation under the circumstances set forth in paragraph (f)(2) of this section and may collect such income tax from any 10-percent shareholders of the stapled foreign corporation under the circumstances set forth in paragraph (f)(3) of this section.

(2) *Collection from domestic stapled corporation.* If the stapled foreign corporation does not pay its income tax liability that was properly assessed, the unpaid balance of such income tax or any portion thereof may be collected from the stapled domestic corporation, provided that the following conditions are satisfied—

(i) The Commissioner has issued a notice and demand for payment of such income tax to the stapled foreign corporation in accordance with § 301.6303–1 of this Chapter;

(ii) The stapled foreign corporation has failed to pay the income tax by the date specified in such notice and demand;

(iii) The Commissioner has issued a notice and demand for payment of the unpaid portion of such income tax to the stapled domestic corporation in accordance with § 301.6303–1 of this Chapter.

(3) *Collection from 10-percent shareholders of the stapled foreign corporation.* The unpaid balance of the stapled foreign corporation's income tax liability may be collected from a 10-percent shareholder of the stapled foreign corporation, limited to each such shareholder's income tax liability as determined under paragraph (f)(4)(iv) of this section, provided the following conditions are satisfied—

(i) The Commissioner has issued a notice and demand to the stapled domestic corporation for the unpaid portion of the stapled foreign corporation's income tax liability, as provided in paragraph (f)(2)(iii) of this section;

(ii) The stapled domestic corporation has failed to pay the income tax by the date specified in such notice and demand;

(iii) The Commissioner has issued a notice and demand for payment of the unpaid portion of such income tax to such 10-percent shareholder of the stapled foreign corporation in accordance with § 301.6303–1 of this Chapter.

(4) *Special rules and definitions.* For purposes of this paragraph (f), the following rules and definitions apply:

(i) *Stapled domestic corporation.* A domestic corporation is a *stapled domestic corporation* with respect to a stapled foreign corporation if such domestic corporation and the stapled foreign corporation are stapled entities as described in paragraph (b)(1) of this section.

(ii) *10-percent shareholder.* A *10-percent shareholder* of a stapled foreign corporation is any person that owned directly 10 percent or more of the total value or total combined voting power of all classes of stock in the stapled foreign corporation for any day of the stapled foreign corporation's taxable year with respect to which the income tax liability relates.

(iii) *10-percent shareholder in the case of indirect ownership of stapled foreign corporation stock.* [Reserved].

(iv) *Determination of a 10-percent shareholder's income tax liability.* The income tax liability of a 10-percent shareholder of a stapled foreign corporation, for the income tax of the stapled foreign corporation under section 269B and this section, is determined by assigning an equal portion of the total income tax liability of the stapled foreign corporation for the taxable year to each day in such corporation's taxable year, and then dividing that portion ratably among the shares outstanding for that day on the basis of the relative values of such shares. The liability of any 10-percent shareholder for this purpose is the sum of the income tax liability allocated to the shares held by such shareholder for each day in the taxable year.

(v) *Income tax.* The term *income tax* means any income tax liability imposed on a domestic corporation under title 26 of the United States Code, including additions to tax, additional amounts, penalties, and interest related to such income tax liability.

(g) *Effective dates*—(1) Except as provided in this paragraph (g), the provisions of this section are applicable for taxable years that begin after July 29, 2005.

(2) Paragraphs (d)(1) and (f) of this section (except as applied to the collection of tax from any 10-percent shareholder of a stapled foreign corporation that is a foreign person) are applicable beginning on—

(i) July 18, 1984, for any foreign corporation that became stapled to a domestic corporation after June 30, 1983; and

(ii) January 1, 1987, for any foreign corporation that was stapled to a domestic corporation as of June 30, 1983.

(3) Paragraph (d)(2) of this section is applicable for taxable years beginning after July 22, 2003, except that in the case of a foreign corporation that becomes stapled to a domestic corporation on or after July 22, 2003, paragraph (d)(2) of this section applies for taxable years ending on or after July 22, 2003.

(4) Paragraph (e) of this section is applicable beginning on July 18, 1984, except as provided in paragraph (g)(5) of this section.

(5) In the case of a foreign corporation that was stapled to a domestic corporation as of June 30, 1983, which was entitled to claim benefits under an income tax treaty as of that date, and which remains eligible for such treaty benefits, paragraph (e) of this section will not apply to such foreign corporation and for all purposes of the Internal Revenue Code such corporation will continue to be treated as a foreign entity. The prior sentence will continue to apply even if such treaty is subsequently modified by protocol, or superseded by a new treaty, so long as the stapled foreign corporation continues to be eligible to claim such treaty benefits. If the treaty benefits to which the stapled foreign corporation was entitled as of June 30, 1983, are terminated, then a deemed conversion of the foreign corporation to a domestic corporation shall occur pursuant to paragraph (c) of this section as of the date of such termination.

■ **Par. 3.** In § 1.367(b)–2, paragraph (g) is revised to read as follows:

§ 1.367(b)–2 Definitions and special rules.

* * * * *

(g) *Stapled stock under section 269B.* For rules addressing the deemed conversion of a foreign corporation to a domestic corporation under section 269B, see § 1.269B–1(c).

* * * * *

PART 301—PROCEDURE AND ADMINISTRATION

■ **Par 4.** The authority citation for part 301 continues to read, in part, as follows:

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

Section 301.269B–1 also issued under 26 U.S.C. 269B(b).

■ **Par. 5.** Section 301.269B–1 is added to read as follows:

§ 301.269B–1 Stapled foreign corporations.

In accordance with section 269B(a)(1), a stapled foreign corporation is subject to the same taxes that apply to a domestic corporation under Title 26 of the Internal Revenue Code. For provisions concerning taxes other than income for which the stapled foreign corporation is liable, apply the same rules as set forth in § 1.269B–1(a) through (f)(1)(i), and (g) of this Chapter, except that references to *income tax* shall be replaced with the term *tax.* In addition, for purposes of collecting those taxes solely from the stapled foreign corporation, the term *tax* means any tax liability imposed on a domestic corporation under Title 26 of the United States Code, including additions to tax, additional amounts, penalties, and interest related to that tax liability.

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

Approved: July 14, 2005.

Eric Solomon,

Acting Deputy Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 05–15059 Filed 7–28–05; 8:45 am]

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Parts 100 and 165

[CGD01–05–012]

RIN 1625–AA00 and 1625–AA08

Safety Zones; Long Island Sound Annual Fireworks Displays

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is revising regulations governing safety zones for fireworks displays in Long Island Sound. This revision establishes 9 new permanent safety zones, revises the location for one established fireworks safety zone, and amends the notification and enforcement provisions to include additional launches from beach areas. This action is necessary to provide for the safety of life on navigable waters during the events.

DATES: This rulemaking is effective June 25, 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 CGD01–05–012 and are available for inspection or copying at Group/MSO Long Island Sound, New Haven, CT, between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LT Andrea K. Logman, Chief, Waterways Management Division Coast Guard Group/MSO Long Island Sound, Connecticut (203) 468–4429.

SUPPLEMENTARY INFORMATION:

Regulatory History

On April 25, 2005, the Captain of the Port signed a notice of proposed rulemaking (NPRM) entitled ''Safety Zones; Long Island Sound Annual Fireworks Displays.'' The NPRM was published in the **Federal Register** (70 FR 23821) on 5 May 2005. No comments were received on the proposed rule. No public hearing was requested, and none was held.

Since regulations located in 33 CFR 100.114(a) will be removed and redesignated, the Commander, First Coast Guard District must authorize that change. Though the Captain of the Port, Long Island Sound, provided the notice of the proposed rule in the **Federal Register** (70 FR 23821), the Commander, First Coast Guard District incorporates that notice and any and all comments regarding the rule into this final rule.

In accordance with 5 U.S.C. (d)(3), the Coast Guard finds good cause for making this rule effective less than 30 days after publication in the **Federal Register**. The Coast Guard wished to provide the public with the opportunity to comment on this rulemaking. By doing so, the timeframe for the publication of the final rule has been reduced to less than 30 days, in order to make this regulation effective for the scheduled dates of the events for which regulations are being established or modified herein, several of which are at the end of June or the beginning of July, 2005. The delay inherent in publication of this final rule 30 days in advance of its effective date is contrary to the public interest and impracticable, as immediate action is needed to protect the maritime community from the hazards associated with fireworks events. The Coast Guard Group/Marine Safety Office Long Island Sound will make this Final Rule widely available to the maritime community and general public through notification in the Local Notice to Mariners, marine safety information bulletins and through local waterways users groups.

Background and Purpose

The Coast Guard is revising its safety zones for fireworks displays in the Long Island Sound Captain of the Port Zone found at Title 33 Code of Federal Regulations (CFR), section 165.151. These revisions add 9 permanent safety zones and revises one current safety zone that will be activated for fireworks displays that occur on an annual basis. Of the 9 new permanent safety zones, 5 of these currently have special local regulations established under 33 CFR 100.114, which will be moved to 33 CFR 165.151. These 5 events have specific dates assigned to them under that regulation. However, due to scheduling issues, the events have not been held over the last several years on the dates specified. As a result, numerous temporary regulations have needed to be implemented to provide for safety or the maritime community. As the events require a limited access but flexibility in scheduling, a permanent safety zone as opposed to special local regulations is prudent. This will ensure the safety of the maritime community viewing the displays or transiting in the vicinity of the displays. Once implemented as safety zones, the special local regulations located at 33 CFR 100.114 for these events will be removed. The remaining 4 new safety zones are for annual events that do not currently have permanent safety zones or special local regulations.

The events for which safety zones are being established are held in the following 9 locations: On the Thames River off of Norwich, CT; in Branford Harbor off of Branford Point, Branford, CT on Long Island Sound; in Long Island Sound off Cosey Beach, East Haven, CT; in Long Island Sound off Compo Beach, Westport, CT; in Westbrook Harbor on Long Island Sound, CT; in Long Island Sound off Calf Pasture Beach, Norwalk, CT; in Long Island Sound off Short Beach, Stratford, CT; in Long Island Sound off Old Black Point Beach, East Lyme, CT; and in Northport Bay off Asharoken Beach, NY. By establishing permanent safety zones, the Coast Guard will eliminate the need to establish temporary rules annually. The Coast Guard has promulgated safety zones or special local regulations for fireworks displays at all of these 9 areas in the past and has received no public comments or concerns regarding the impact to waterway traffic from these annually recurring events. Additionally, this rulemaking is revising the regulations currently in place in 33 CFR 165.151(a)(10) for the Mashantucket Pequot Fireworks Safety zone. This revision changes the location of the three barges used for this fireworks display, increasing the distance between each of the barges. Smaller-sized fireworks shells, a maximum of a 10–inch shell, will be used on the two outer barges, decreasing the safety zone radius for each of the two outer barges from 1200 feet to 1000 feet. The center barge in this display will continue to have a maximum of 12–inch shells, and will continue to have a 1200–foot radius safety zone surrounding it. Due to the changes in the outer barge shell size, there is no increase to the restricted area of the safety zone as compared with what has been in place for this event in 33 CFR 165.151(a)(10). The Coast Guard has received no public comments or concerns regarding the impact to waterway traffic from the Mashantucket Pequot Fireworks.

While this regulation will prevent vessels from transiting areas made hazardous from the launching of fireworks, vessels may transit in all portions of the affected waterways except for those areas covered by the zones.

Discussion of Comments and Changes

No comments were received in response to the NPRM, however, one change is made to the final rule. Within the Enforcement Period selection of 33 CFR 165.151, the word ''posted'' is changed to ''present'' in order to more accurately reflect the location of the

barge or land based launch site sign that reads ''FIREWORKS—STAY AWAY.''

Discussion of Rule

The Coast Guard is revising 33 CFR section 165.151 to add 9 new safety zones for fireworks displays that occur on a regular basis in the same locations. The Coast Guard is also revising 33 CFR 165.151(a)(10), an established safety zone for the Mashantucket Pequot Fireworks. The sizes of these safety zones were determined in accordance with Navigational and Vessel Inspection Circular (NVIC) 07–02, entitled *Marine Safety at Fireworks Displays*, and in accordance with National Fire Protection Association Standard 1123, Code for Fireworks Displays (100-foot distance per inch of diameter of the fireworks mortars). Barge locations and mortar sizes were determined to ensure appropriate safety zone locations will not interfere with any known marinas or piers. The 9 new safety zones and revisions to 33 CFR 165.151(a)(10) for the Mashantucket Pequot Fireworks Safety Zone are described below under the respective event. All coordinates are North American Datum 1983 (NAD 83).

Norwich July Fireworks

The safety zone for the annual Norwich July Fireworks display encompasses all waters of the Thames River turning basin within a 600-foot radius of the fireworks barge in approximate position 41°31′20.9″ N, 072°04′45.9″ W, located off of Norwich, CT.

Town of Branford Fireworks

The safety zone for the annual Town of Branford fireworks display encompasses all waters of Branford Harbor off of Branford Point within a 600-foot radius of the fireworks launch area located on Branford Point in approximate position 41°15′30″ N, 072°49′22″ W.

Vietnam Veterans Local 484; Town of East Haven Fireworks

The safety zone for the annual Vietnam Veterans Local 484/Town of East Haven fireworks display encompasses all waters of Long Island Sound off of Cosey Beach, East Haven, CT within a 1000-foot radius of the fireworks barge in approximate position 41°14′19″ N, 072°52′9.8″ W.

Westport Police Athletic League Fireworks

The safety zone for the annual Westport Police Athletic League fireworks display encompasses all waters of Long Island Sound Off Compo Beach, Westport, CT within a 800-foot radius of the fireworks barge in approximate position 41°09′2.5″ N, 073°20′1.1″ W.

Westbrook, CT July Celebration

The safety zone for the annual Westbrook July Celebration fireworks display encompasses all waters of Westbrook Harbor, Westbrook, CT within a 800-foot radius of the fireworks barge located in approximate position 41°16′50″ N, 072°26′14″ W.

Norwalk Fireworks

The safety zone for the annual Norwalk Fireworks display encompasses all waters of Long Island Sound off of Calf Pasture Beach in Norwalk, CT within a 1000-foot radius of the fireworks barge located in approximate position 40°05′10″ N, 073°23′20″ W.

Town of Stratford Fireworks

The safety zone for the annual Town of Stratford fireworks display encompasses all waters of Long Island Sound of Long Island Sound off of Short Beach in Stratford. CT, within a 800-foot radius of the fireworks launch area located in approximate position 41°09′5″ N, 073°06′5″ W.

Old Black Point Beach Association Fireworks

The safety zone for the annual Old Black Point Beach Association fireworks display encompasses all waters of Long Island Sound off of Old Black Point Beach in East Lyme, CT, within a 1000-foot radius of the fireworks launch area located on Old Black Point Beach at approximate position 41°17′34.9″ N, 072°12′55.6″ W.

Village of Asharoken Fireworks

The safety zone for the annual Village of Asharoken Fireworks encompasses all waters of Northport Bay off of Asharoken Beach in Asharoken, NY, within a 600-foot radius of the fireworks launch area located in approximate position 40°55′30″ N, 072°21′ W.

Mashantucket Pequot Fireworks

The safety zone for the Mashantucket Pequot Fireworks includes all waters of the Thames River within 1200-feet of a fireworks barge located at 41°20′57.1″ N, 72°05′22.1″ W; and within 1000-feet of each of the fireworks barges located at 41°21′03.3″ N, 72°05′24.5″ W and 41°20′51.75″ N, 72°05′18.90″ W.

This rulemaking also changes 33 CRF 165.151(b) and (c). These changes clarify the marking requirements for fireworks barges, described below, and include marking requirements for fireworks launches from land within the regulations.

Schedule

The Coast Guard does not know the specific annually recurring dates of these fireworks display safety zones. Coast Guard Group/MSO Long Island Sound or Coast Guard Group Moriches will give notice of the activation of each safety zone by all appropriate means to provide the widest publicity among the affected segments of the public. This will include publication in the Local Notice to Mariners. Marine information and facsimile broadcasts may also be made to notify the public regarding these events. Broadcast notice to mariners will begin 12 to 24 hours before the event is scheduled to begin. Fireworks barges used in the locations stated in this rulemaking will also have a sign on their port and starboard side labeled ''FIREWORKS—STAY AWAY''. This will provide on-scene notice that the safety zone the fireworks barge is located in will be activated on that day. This sign will consist of, at a minimum, 10″ high by 1.5″ wide red lettering on a white background. Displays launched from shore sites will have a sign labeled ''FIREWORKS—STAY AWAY'' with the same size requirements.

The enforcement period for each safety zone is from 8 p.m. to 11 p.m. (E.S.T.). However, vessels may enter, remain in, or transit through these safety zones during this time frame if authorized by the Captain of the Port Long Island Sound, or designated Coast Guard patrol personnel on scene, as provided for in 33 CFR 165.23. Mariners may request permission to transit through these safety zones from the Captain of the Port Long Island Sound or his on-scene representative. On-scene representatives are commissioned, warrant, and petty officers of the U.S. Coast Guard.

This rule is begin established to provide for the safety of life on navigable waters during the events.

Regulatory Evaluation

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

DHS is unnecessary. This regulation may have some impact on the public, the potential impact will be minimized for the following reasons: Vessels will only be restricted from the safety zone areas for a 3 hour period; vessels may transit in all portions of the affected waterways except for those areas covered by the safety zones; The Coast Guard has promulgated either safety zones or special local regulations in accordance with 33 CFR Part 100 for fireworks displays at all 10 locations areas in the past and has not received notice of any negative impact caused by any of the safety zones or special local regulations. Additionally, advance notifications will also be made to the local maritime community by the Local Notice to Mariners well in advance of the events. Marine information facsimile broadcasts may also be made.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), the Coast Guard considered whether this rule will 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 may affect the following entities, some of which may be small entities: Commercial vessels wishing to transit, fish or anchor in the portions of the Thames River, Long Island Sound or Northport Bay covered by this rule. For the reasons outlined in the Regulatory Evaluation section above, this rule will not have a significant impact on a substantial number of small entities.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule will 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 will 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 rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule will affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact LT Andrea K. Logman, Waterways Management Officer or the Command Center at Coast Guard Group/Marine Safety Office Long Island Sound, CT, at (203) 468–4429 or (203) 468–4444 respectively.

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

We have analyzed this rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This rule does not impose an unfunded mandate.

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 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.

To help the Coast Guard establish regular and meaningful consultation and collaboration with Indian and Alaskan Native tribes, we published a notice in the **Federal Register** (66 FR 36361, July 11, 2001) requesting comments on how to best carry out the Order. We invite your comments on how this rule might impact tribal governments, even if that impact may not constitute a ''tribal implication'' under the Order.

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

Environment

The Coast Guard has considered the environmental impact of this rule and concluded that, under figure 2–1, paragraph (34)(g) of Commandant Instruction M16475.1D, this rule is to be categorically excluded from further environmental documentation. A ''Categorical Exclusion Determination''

is available in the docket where indicated under **ADDRESSES**.

List of Subjects

33 CFR Part 100

Marine safety, Navigation (water), Reporting and Recordkeeping requirements, waterways.

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 is amending 33 CFR parts 100 and 165 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

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

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

§ 100.114 [Amended]

■ 2. In the table for § 100.114(a), remove 6.4 and redesignate 6.5 and 6.6 as 6.4 and 6.5 respectively, remove 7.38, 7.39, 7.41 and 7.42, and redesignate 7.40 as 7.38, and 7.43 through 7.51 as 7.39 through 7.47 respectively.

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1226 and 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.

■ 4. Revise § 165.151(a)(10) and add new § 165.151(a)(18) to (26), and revise paragraphs (b) and (c) to read as follows:

§ 165.151 Safety Zones; Long Island Sound annual fireworks displays.

(a) * * *

(10) *Mashantucket Pequot Fireworks Safety Zone.* All waters of the Thames River off of New London, CT, within a 1200–foot radius of a fireworks barge located in approximate position 41°20′57.1″ N, 72°05′22.1″ W; and within 1000–feet of fireworks barges located in approximate positions: barge one, 41°21′03.3″ N, 72°05′24.5″ W; and barge two, 41°20′51.75″ N, 72°05′18.90″ W.

* * *

(18) *Norwich July Fireworks Safety Zone.* All waters of the Thames River within a 600–foot radius of the fireworks launch area in approximate position 41°31′20.9″ N, 072°04′45.9′ W, located off of Norwich, CT.

(19) *Town of Branford Fireworks Safety Zone.* All waters of Branford Harbor off of Branford Point within a 600–foot radius of the fireworks launch area located on Branford Point in approximate position 41°15′30″ N, 072°49′22″ W.

(20) *Vietnam Veterans Local 484/ Town of East Haven Fireworks Safety Zone.* All waters of Long Sound off of Cosey Beach, East Haven, CT within a 1000–foot radius of the fireworks barge in approximate position 41°14′19″ N, 072°52′9.8″ W.

(21) *Westport Police Athletic League Fireworks Safety Zone.* All waters of Long Island Sound off Compo Beach, Westport, CT within a 800–foot radius of the fireworks barge in approximate position 41°09′2.5″ N, 073°20′1.1″ W.

(22) *Westbrook, CT July Celebration Safety Zone.* All waters of Westbrook Harbor in Long Island Sound within a 800–foot radius of the fireworks barge located in approximate position 41°16′50″ N, 072°26′14″ W.

(23) *Norwalk Fireworks Safety Zone.* All waters of Long Island Sound off of Calf Pasture Beach in Norwalk, CT within a 1000–foot radius of the fireworks barge located in approximate position 40°05′10″ N, 073°23′20″ W.

(24) *Town of Stratford Fireworks Safety Zone.* All waters of Long Island Sound off of Short Beach in Stratford, CT, within a 800–foot radius of the fireworks launch area located in approximate position 41°09′5″ N, 073°06′5″ W.

(25) *Old Black Point Beach Association Fireworks Safety Zone.* All waters of Long Island Sound off Old Black Point Beach in East Lyme, CT, within a 1000-foot radius of the fireworks launch area located on Old Black Point Beach in approximate position 41°17′34.9″ N, 072°12′55.6″ W.

(26) *Village of Asharoken Fireworks Safety Zone.* All waters of Northport Bay off of Asharoken Beach in Asharoken, NY within a 600-foot radius of the fireworks launch area located in approximate position 40°55′30″ N, 072°21′ W.

(b) *Notification.* Coast Guard Group/ Marine Safety Office Long Island Sound and Coast Guard Group Moriches will cause notice of the activation of these safety zones to be made by all appropriate means to effect the widest publicity among the affected segments of the public, including publication in the local notice to mariners, marine information broadcasts, and facsimile. Fireworks barges used in these locations will also have a sign on their port and starboard side labeled ''FIREWORKS—STAY AWAY''. Displays launched from shore sites will have a sign labeled ''FIREWORKS—STAY AWAY'' with the same size requirements. The signs required by this section must consist of red letters at least 10 inches high, and 1.5 inch thick on a white background.

(c) *Enforcement period.* Specific zones in this section will be enforced from 8 p.m. to 11 p.m. each day a barge or land based launch site with sign reading ''FIREWORKS—STAY AWAY'' is present in that zone.

* * * * *

Dated: June 24, 2005.

Robert W. Durfee,

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

[FR Doc. 05–15076 Filed 7–28–05; 8:05 am]

BILLING CODE 4910–15–M

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD07–04–148]

RIN 1625–AA09

Drawbridge Operation Regulation; CSX Railroad, Hillsborough River, Mile 0.7, Tampa, FL

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is changing the regulation governing the operation of the CSX Railroad Bridge across the Hillsborough River, Mile 0.7, Tampa, Florida. Previously owned by the Seaboard System Railroad, the bridge is now the CSX Railroad Bridge vice the Seaboard System Railroad Bridge. This rule allows the bridge to operate using an automated system without an onsite bridge tender.

DATES: This rule is effective August 29, 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 [CGD07–04–148] and are available for inspection or copying at Commander (obr), Seventh Coast Guard District, 909 SE 1st Avenue, Suite 432, Miami, Florida 33131–3050, between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Bridge Branch (obr), Seventh Coast Guard District, maintains the public docket for this rulemaking.

FOR FURTHER INFORMATION CONTACT: Mr. Gwin Tate, Project Manager, Seventh Coast Guard District, Bridge Branch, (305) 415–6747.

SUPPLEMENTARY INFORMATION:

Regulatory History

On March 3, 2005, we published a notice of proposed rulemaking (NPRM) entitled Drawbridge Operation Regulations; CSX Railroad, Hillsborough River, Mile 0.7, Tampa, FL, in the **Federal Register** (70 FR 10349). We received no letters commenting on the proposed rule. No public meeting was requested, and none was held.

Background and Purpose

The CSX Railroad owner requested that the Coast Guard remove the existing regulation governing the operation of the CSX Railroad Bridge over the Hillsborough River and allow the bridge to operate on an automated system. The request was made because there is only one train transit per day. The CSX Railroad Bridge is located on the Hillsborough River, Mile 0.7, Tampa, FL. The current regulation governing the operation of the CSX Railroad Bridge is published in 33 CFR 117.291 and requires the bridge to open on signal from 4 p.m. to 12 midnight Monday through Friday. At all other times, the draw shall be maintained in the fully open position.

Discussion of Comments and Changes

We received no comments on the NPRM. This change will allow the bridge to open automatically, using a system of electronic signals and laser scanners to operate the closing and opening sequence.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation is unnecessary. Vessel traffic will be able to transit through the open bridge with the exception of the short closure period required for the train to transit over the bridge.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which might be small entities: the owners or operators of vessels that proceed under the bridge during daily train crossings. The rule will not change the number of times the bridge will need to be in a closed position for trains. Additionally, the bridge will remain in the open to navigation position at all other times for the benefit of vessel traffic.

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. The Coast Guard offered to assist small businesses, organizations, or governmental jurisdictions by providing a contact person listed in the **FOR FURTHER INFORMATION CONTACT** section for additional information.

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

This rule 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 would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it 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 M16475.1D, 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 because it deals with drawbridge operations. Under figure 2–1, paragraph (32)(e), of the Instruction, an ''Environmental Analysis Check List'' and a final ''Categorical Exclusion Determination'' are not required for this rule.

List of Subjects in 33 CFR Part 117

Bridges.

■ For the reasons discussed 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. In § 117.291 revise paragraph (b) to read as follows:

§ 117.291 Hillsborough River.

* * * * *

(b) The draw of the CSX Railroad Bridge across the Hillsborough River, mile 0.7, at Tampa, operates as follows:

(1) The bridge is not tended.

(2) The draw is normally in the fully open position, displaying green lights to indicate that vessels may pass.

(3) As a train approaches, provided the marine traffic detection laser scanners do not detect a vessel under the draw, the lights change to flashing red and a horn continuously sounds while the draw closes. The draw remains closed until the train passes.

(4) After the train clears the bridge, the lights continue to flash red and the horn again continuously sounds while the draw opens, until the draw is fully open and the lights return to green.

Dated: July 15, 2005.

D.B. Peterman,

RADM, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 05–15062 Filed 7–28–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD05–05–048]

RIN 1625–AA–09

Drawbridge Operation Regulations; Atlantic Intracoastal Waterway, Onslow Beach, NC

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Fifth Coast Guard District, has approved a temporary deviation from the regulations governing the operation of the Onslow Beach Swing Bridge across the Atlantic Intracoastal Waterway (AICW), mile 240.7, at Camp Lejeune, NC. This deviation allows the drawbridge to remain closed-to-navigation each day from 11 p.m. to 9 a.m., beginning October 6 until November 11, 2005, to facilitate sandblasting and painting.

DATES: The deviation is effective from 11 p.m. on October 6 to 9 a.m. on November 11, 2005.

FOR FURTHER INFORMATION CONTACT: Gary Heyer, Bridge Management Specialist, Fifth Coast Guard District, at (757) 398–6629.

SUPPLEMENTARY INFORMATION: The Onslow Beach Swing Bridge and adjoining property are part of the U.S. Navy and the Marine Corps Base at Camp Lejeune military reservation, located adjacent to Jacksonville, North Carolina. The current regulations at 33 CFR § 117.821(a)(2), require the Onslow Beach Swing Bridge to open on signal for commercial vessels at all times; and on signal for pleasure vessels, except between 7 a.m. and 7 p.m., the draw need only open on the hour and half-hour.

The U.S. Navy has hired a contractor to sandblast and paint the bridge. This work will utilize an encapsulation unit that will immobilize the operation of the swing span. To facilitate the work, the swing span will be closed-to-navigation each day from 11 p.m. to 9 a.m. on October 6, 2005 until and including November 11, 2005. At all other times, the bridge will operate in accordance with 33 CFR § 117.821(a)(2).

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

The District Commander has granted a temporary deviation from the operating requirements listed in 33 CFR § 117.35 for the purpose of repair completion of the drawbridge. The temporary deviation allows the Onslow Beach Swing Bridge across the AICW, mile 240.7, at Camp Lejeune, NC, to remain closed-to-navigation each day from 11 p.m. to 9 a.m. on October 6, 2005 until November 11, 2005.

Dated: July 22, 2005.

Waverly W. Gregory, Jr.,

Chief, Bridge Administration Branch, Fifth Coast Guard District.

[FR Doc. 05–15066 Filed 7–28–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 147

[CGD08–05–012]

RIN 1625–AA00

Safety Zone; Outer Continental Shelf Facility in the Gulf of Mexico for Green Canyon 782

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing a safety zone around a petroleum and gas production facility in Green Canyon 782 of the Outer Continental Shelf in the Gulf of Mexico.

The facility needs to be protected from vessels operating outside the normal shipping channels and fairways, and placing a safety zone around this area will significantly reduce the threat of allisions, oil spills and releases of natural gas. This rule prohibits all vessels from entering or remaining in the specified area around the facility's location except under specified conditions.

DATES: This final rule is effective August 29, 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 [CGD08–05–012] and are available for inspection or copying at Commander, Eighth Coast Guard District (m), Hale Boggs Federal Bldg., 500 Poydras Street, New Orleans, LA, between 8 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant (LT) Kevin Lynn, Project Manager for Eighth Coast Guard District Commander, Hale Boggs Federal Bldg., 500 Poydras Street, New Orleans, LA 70130, telephone (504) 589–6271.

SUPPLEMENTARY INFORMATION:

Regulatory History

On March 23, 2005, we published a notice of proposed rulemaking (NPRM) entitled ''Safety Zone; Outer Continental Shelf Facility in the Gulf of Mexico for Green Canyon 782'' in the **Federal Register** (70 FR 14614). We received no comments on the proposed rule. No public hearing was requested, and none was held.

Background and Purpose

The Coast Guard is establishing a safety zone around the Mad Dog Truss Spar Platform, a petroleum and gas production facility in the Gulf of Mexico: Mad Dog Truss Spar Platform, Green Canyon 782 (GC 782), located at position 27°11′18″ N, 91°05′12″ W.

This safety zone is in the deepwater area of the Gulf of Mexico. For the purposes of this regulation it is considered to be in waters of 304.8 meters (1,000 feet) or greater depth extending to the limits of the Exclusive Economic Zone (EEZ) contiguous to the territorial sea of the United States and extending to a distance up to 200 nautical miles from the baseline from which the breadth of the sea is measured. Navigation in the area of the safety zone consists of large commercial shipping vessels, fishing vessels, cruise ships, tugs with tows and the occasional recreational vessel. The deepwater area of the Gulf of Mexico also includes an extensive system of fairways. The fairway nearest the safety zone is the Gulf Safety Fairway—Aransas Pass Safety Fairway to Southwest Pass Safety Fairway. Significant amounts of vessel traffic occur in or near the various fairways in the deepwater area.

British Petroleum Exploration and Production, Inc., hereafter referred to as BP, has requested that the Coast Guard establish a safety zone in the Gulf of Mexico around the Mad Dog Truss Spar Platform.

The request for the safety zone was made due to the potential for damage to the mooring system and the platform should vessel traffic approach too close to the platform's location. Information provided by BP to the Coast Guard indicates that the location, production level, and personnel levels on board the facility make it highly likely that any allision with the facility or its mooring system would result in a catastrophic event.

The Coast Guard has evaluated BP's information and concerns against Eighth Coast Guard District criteria developed to determine if an Outer Continental Shelf facility qualifies for a safety zone. Several factors were considered to determine the necessity of a safety zone for the Mad Dog Truss Spar Platform facility: (1) The facility is located approximately 45 nautical miles south of the Gulf Safety Fairway—Aransas Pass Safety Fairway to Southwest Pass Safety Fairway, (2) the facility will have a high daily production capacity of petroleum oil and gas per day; (3) the facility will be manned; and (4) the facility is a truss spar platform.

We conclude that the risk of allision to the facility and the potential for loss of life and damage to the environment resulting from such an accident warrants the establishment of this safety zone. This rule will significantly reduce the threat of allisions, oil spills and natural gas releases and increase the safety of life, property, and the environment in the Gulf of Mexico.

Discussion of Comments and Changes

We received no comments on the proposed rule. Therefore, we have not made any changes in the final rule.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We expect the economic impact of this rule to be so minimal that a full regulatory evaluation under the regulatory policies and procedures of DHS is unnecessary. The impacts on routine navigation are expected to be minimal because the safety zone will not overlap any of the safety fairways within the Gulf of Mexico.

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. Since the Mad Dog Truss Spar Platform is located far offshore, few privately owned fishing vessels and recreational boats/yachts operate in the area. This rule will not impact an attending vessel or vessels less than 100 feet in length overall not engaged in towing. Alternate routes are available for all other vessels impacted by this rule. Use of an alternate route may cause a vessel to incur a delay of four to ten minutes in arriving at their destinations depending on how fast the vessel is traveling. Therefore, the Coast Guard expects the impact of this regulation on small entities to be minimal.

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 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 offered to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking.

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). 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 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 expenditure, we 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 create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Commandant Instruction M16475.1D, 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 categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1 paragraph (34)(g), of the instruction, from further environmental documentation because this rule is not expected to result in any significant environmental impact as described in NEPA.

A final ''Environmental Analysis Check List'' and a final ''Categorical Exclusion Determination'' are available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 147

Continental shelf, Marine safety, Navigation (water).

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 147 as follows:

PART 147—SAFETY ZONES

■ 1. The authority citation for part 147 continues to read as follows:

Authority: 14 U.S.C. 85; 43 U.S.C. 1333; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 147.839 to read as follows:

§ 147.839 Mad Dog Truss Spar Platform safety zone.

(a) *Description.* Mad Dog Truss Spar Platform, Green Canyon 782 (GC 782), located at position 27°11′18″ N, 91°05′12″ W. The area within 500 meters (1640.4 feet) from each point on the structure's outer edge is a safety zone. These coordinates are based upon [NAD 83].

(b) *Regulation.* No vessel may enter or remain in this safety zone except the following:

(1) An attending vessel;

(2) A vessel under 100 feet in length overall not engaged in towing; or

(3) A vessel authorized by the Commander, Eighth Coast Guard District.

Dated: July 14, 2005.

R.F. Duncan,

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

[FR Doc. 05–15073 Filed 7–28–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 147

[CGD08–05–019]

RIN 1625–AA00

Safety Zone; Outer Continental Shelf Facility in the Gulf of Mexico for Mississippi Canyon 778

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing a safety zone around a petroleum and gas production facility in Mississippi Canyon 778 of the Outer Continental Shelf in the Gulf of Mexico. The facility needs to be protected from vessels operating outside the normal shipping channels and fairways, and placing a safety zone around this area will significantly reduce the threat of collisions, oil spills and releases of natural gas. This rule prohibits all vessels from entering or remaining in the specified area around the facility's location except under specified conditions.

DATES: This final rule is effective August 29, 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 [CGD08–05–019] and are available for inspection or copying at Commander, Eighth Coast Guard District (m), Hale Boggs Federal Bldg., 500 Poydras Street, New Orleans, LA, between 8 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant (LT) Kevin Lynn, Project Manager for Eighth Coast Guard District Commander, Hale Boggs Federal Bldg., 500 Poydras Street, New Orleans, LA 70130, telephone (504) 589–6271.

SUPPLEMENTARY INFORMATION:

Regulatory History

On April 26, 2005, we published a notice of proposed rulemaking (NPRM) entitled ''Safety Zone; Outer Continental Shelf Facility in the Gulf of Mexico for Mississippi Canyon 778'' in the **Federal Register** (70 FR 21378). We received no comments on the proposed rule. No public hearing was requested, and none was held.

Background and Purpose

The Coast Guard is establishing a safety zone around the Thunder Horse Semi-Submersible facility, a petroleum and gas production facility in the Gulf of Mexico in Mississippi Canyon 778 (MC 778), located at position 28°11′26″ N, 88°29′44″ W.

This safety zone is in the deepwater area of the Gulf of Mexico. For the purposes of this regulation it is considered to be in waters of 304.8 meters (1,000 feet) or greater depth extending to the limits of the Exclusive Economic Zone (EEZ) contiguous to the territorial sea of the United States and extending to a distance up to 200 nautical miles from the baseline from which the breadth of the sea is measured. Navigation in the area of the safety zone consists of large commercial shipping vessels, fishing vessels, cruise ships, tugs with tows and the occasional recreational vessel. The deepwater area of the Gulf of Mexico also includes an extensive system of fairways. The fairway nearest the safety zone is the South Pass (Mississippi River) Safety Fairway—South Pass to Sea Safety Fairway. Significant amounts of vessel traffic occur in or near the various fairways in the deepwater area.

British Petroleum America Inc., hereafter referred to as BP, has requested that the Coast Guard establish a safety zone in the Gulf of Mexico around the Thunder Horse Semi-Submersible facility.

The request for the safety zone was made due to the high level of shipping activity around the facility and the associated safety concerns for both the onboard personnel and the environment. Information provided by BP to the Coast Guard indicates that the location, production levels, and personnel levels on board the facility make it highly likely that any allision with the facility or its mooring system would result in a catastrophic event.

The Coast Guard has evaluated BP's information and concerns against Eighth Coast Guard District criteria developed to determine if an Outer Continental Shelf facility qualifies for a safety zone. Several factors were considered to determine the necessity of a safety zone for the Thunder Horse Semi-Submersible facility: (1) The facility is located approximately 50 nautical miles south of the ''South Pass (Mississippi River) Safety Fairway—South Pass to Sea Safety Fairway''; (2) the facility will have a high daily production capacity of petroleum oil and gas per day; (3) the facility will be manned; and (4) the facility is a semi-submersible type platform.

We conclude that the risk of allision to the facility and the potential for loss of life and damage to the environment resulting from such an accident warrants the establishment of this safety zone. This rule will significantly reduce the threat of allisions, oil spills and natural gas releases and increase the safety of life, property, and the environment in the Gulf of Mexico.

Discussion of Comments and Changes

We received no comments on the proposed rule. Therefore, we have not made any changes in the final rule.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We expect the economic impact of this rule to be so minimal that a full regulatory evaluation under the regulatory policies and procedures of DHS is unnecessary. The impacts on routine navigation are expected to be minimal because the safety zone will not overlap any of the safety fairways within the Gulf of Mexico.

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. Since the Thunder Horse Semi-Submersible is located far offshore, few privately owned fishing vessels and recreational boats/yachts operate in the area. This rule will not impact an attending vessel or vessels less than 100 feet in length overall not engaged in towing. Alternate routes are available for all other vessels impacted by this rule. Use of an alternate route may cause a vessel to incur a delay of four to ten minutes in arriving at their destinations depending on how fast the vessel is traveling. Therefore, the Coast Guard expects the impact of this regulation on small entities to be minimal.

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 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 offered to assist small entities in understanding this rule so that they can

better evaluate its effects on them and participate in the rulemaking.

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). 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 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 expenditure, we 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 create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Commandant Instruction M16475.1D, 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 categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1 paragraph (34)(g), of the instruction, from further environmental documentation because this rule is not expected to result in any significant environmental impact as described in NEPA.

A final ''Environmental Analysis Check List'' and a final ''Categorical Exclusion Determination'' are available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 147

Continental shelf, Marine safety, Navigation (water).

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 147 as follows:

PART 147—SAFETY ZONES

■ 1. The authority citation for part 147 continues to read as follows:

Authority: 14 U.S.C. 85; 43 U.S.C. 1333; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 147.843 to read as follows:

§ 147.843 Thunder Horse Semi-Submersible safety zone.

(a) *Description*. Thunder Horse Semi-Submersible, Mississippi Canyon 778 (MC 778), located at position 28°11′26″ N, 88°29′44″ W. The area within 500 meters (1640.4 feet) from each point on the structure's outer edge is a safety zone. These coordinates are based upon [NAD 83].

(b) *Regulation*. No vessel may enter or remain in this safety zone except the following:

(1) An attending vessel;

(2) A vessel under 100 feet in length overall not engaged in towing; or

(3) A vessel authorized by the Commander, Eighth Coast Guard District.

Dated: July 14, 2005.

R.F. Duncan,

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

[FR Doc. 05–15074 Filed 7–28–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 147

[CGD08–05–015]

RIN 1625–AA00

Safety Zone; Outer Continental Shelf Facility in the Gulf of Mexico for Green Canyon 787

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing a safety zone around a petroleum and gas production facility in Green Canyon 787 of the Outer Continental Shelf in the Gulf of Mexico. The facility needs to be protected from vessels operating outside the normal shipping channels and fairways, and placing a safety zone around this area will significantly reduce the threat of allisions, oil spills and releases of natural gas. This rule prohibits all vessels from entering or remaining in the specified area around the facility's location except under specified conditions.

DATES: This final rule is effective on October 1, 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 [CGD08–05–015] and are available for inspection or copying at Commander, Eighth Coast Guard District (m), Hale Boggs Federal Bldg., 500 Poydras Street, New Orleans, LA, between 8 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant (LT) Kevin Lynn, Project Manager for Eighth Coast Guard District Commander, Hale Boggs Federal Bldg., 500 Poydras Street, New Orleans, LA 70130, telephone (504) 589–6271.

SUPPLEMENTARY INFORMATION:

Regulatory History

On March 23, 2005, we published a notice of proposed rulemaking (NPRM) entitled ''Safety Zone; Outer Continental Shelf Facility in the Gulf of Mexico for Green Canyon 787'' in the **Federal Register** (70 FR 14612). We received no comments on the proposed rule. No public hearing was requested, and none was held.

Background and Purpose

The Coast Guard is establishing a safety zone around the Atlantis Semi-Submersible facility, a petroleum and gas production facility in the Gulf of Mexico in Green Canyon 787 (GC 787), located at position 27°11′44″ N, 90°01′37″ W.

This safety zone is in the deepwater area of the Gulf of Mexico. For the purposes of this regulation it is considered to be in waters of 304.8 meters (1,000 feet) or greater depth extending to the limits of the Exclusive Economic Zone (EEZ) contiguous to the territorial sea of the United States and extending to a distance up to 200 nautical miles from the baseline from which the breadth of the sea is measured. Navigation in the area of the safety zone consists of large commercial shipping vessels, fishing vessels, cruise ships, tugs with tows and the occasional recreational vessel. The deepwater area of the Gulf of Mexico also includes an extensive system of fairways. The fairway nearest the safety zone is the South of Gulf Safety Fairway. Significant amounts of vessel traffic occur in or near the various fairways in the deepwater area.

British Petroleum Exploration and Production, Inc., hereafter referred to as BP, has requested that the Coast Guard establish a safety zone in the Gulf of Mexico around the Atlantis Semi-Submersible facility.

The request for the safety zone was made due to the high level of shipping activity around the facility and the associated safety concerns for both the onboard personnel and the environment. Information provided by BP to the Coast Guard indicates that the location, production level, and personnel levels on board the facility make it highly likely that any allision with the facility or its mooring system would result in a catastrophic event.

The Coast Guard has evaluated BP's information and concerns against Eighth Coast Guard District criteria developed to determine if an Outer Continental Shelf facility qualifies for a safety zone. Several factors were considered to determine the necessity of a safety zone for the Atlantis Semi-Submersible facility: (1) The facility is located approximately 36 nautical miles south of the South of Gulf Safety Fairway; (2) the facility will have a high daily production capacity of petroleum oil and gas per day; (3) the facility will be manned; and (4) the facility is a semi-submersible type platform.

We conclude that the risk of allision to the facility and the potential for loss of life and damage to the environment resulting from such an accident warrants the establishment of this safety zone. This rule will significantly reduce the threat of allisions, oil spills and natural gas releases and increase the safety of life, property, and the environment in the Gulf of Mexico.

Discussion of Comments and Changes

We received no comments on the proposed rule. This facility was originally expected to be on location beginning September 1, 2005. Subsequent discussions with BP indicate the date has changed to October 1, 2005. Therefore, the effective date of this rule will be October 1, 2005. No other changes to this final rule have been made.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We expect the economic impact of this rule to be so minimal that a full regulatory evaluation under the regulatory policies and procedures of DHS is unnecessary. The impacts on routine navigation are expected to be minimal because the safety zone will not overlap any of the safety fairways within the Gulf of Mexico.

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. Since the Atlantis Semi-Submersible is located far offshore, few privately owned fishing vessels and recreational boats/yachts operate in the area. This rule will not impact an attending vessel or vessels less than 100 feet in length overall not engaged in towing. Alternate routes are available for all other vessels impacted by this rule. Use of an alternate route may cause a vessel to incur a delay of four to ten minutes in arriving at their destinations depending on how fast the vessel is traveling. Therefore, the Coast Guard expects the

impact of this regulation on small entities to be minimal.

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 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 offered to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking.

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). 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 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 expenditure, we 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 create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Commandant Instruction M16475.1D, 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 categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1 paragraph (34)(g), of the instruction, from further environmental documentation because this rule is not expected to result in any significant environmental impact as described in NEPA.

A final ''Environmental Analysis Check List'' and a final ''Categorical Exclusion Determination'' are available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 147

Continental shelf, Marine safety, Navigation (water).

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 147 as follows:

PART 147—SAFETY ZONES

■ 1. The authority citation for part 147 continues to read as follows:

Authority: 14 U.S.C. 85; 43 U.S.C. 1333; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 147.841 to read as follows:

§ 147.841 Atlantis Semi-Submersible safety zone.

(a) *Description.* Atlantis Semi-Submersible, Green Canyon 787 (GC 787), located at position 27°11′44″ N, 90°01′37″ W. The area within 500 meters (1640.4 feet) from each point on the structure's outer edge is a safety zone. These coordinates are based upon [NAD 83].

(b) *Regulation.* No vessel may enter or remain in this safety zone except the following:

(1) An attending vessel;

(2) A vessel under 100 feet in length overall not engaged in towing; or

(3) A vessel authorized by the Commander, Eighth Coast Guard District.

Dated: July 14, 2005.

R.F. Duncan,

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

[FR Doc. 05–15075 Filed 7–28–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD17–05–003]

RIN 1625–AA87

Security Zone; High Capacity Passenger Vessels in the Seventeenth Coast Guard District

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing temporary moving security zones around all escorted high capacity passenger vessels during their transit in the navigable waters of the Seventeenth Coast Guard District. These temporary security zones prohibit any vessel from entering within 100 yards of an escorted high capacity passenger vessel while in transit. These temporary security zones are necessary to mitigate potential terrorist acts and enhance public and maritime safety and security.

DATES: This rule is effective from July 21, 2005, to September 29, 2005.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket CGD17–05–003 and are available for inspection or copying at United States Coast Guard, District 17 (moc), 709 West 9th Street, Juneau, AK 99801 between 8 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LT Matthew York, District 17 (moc), 709 West 9th Street, Juneau, AK 99801, (907) 463–2821.

SUPPLEMENTARY INFORMATION:

Regulatory Information

In a different rulemaking, we published a notice of proposed rulemaking (NPRM) entitled ''Regulated Navigation Area and Security Zones; High Capacity Passenger Vessels in Alaska'' in the **Federal Register** (70 FR 11595, March 9, 2005), docket number CGD17–05–002. That NPRM included provision for moored and anchored vessels that are not included in these temporary security zones. We received several letters in response to that NPRM, which are currently under review and consideration. A supplemental NPRM to docket CGD17–05–002 will be published, and the public will be given the opportunity to comment on the proposed procedures prior to any final rule being established.

This temporary security zone is limited to high capacity passenger vessels during transit in the waters of the Seventeenth Coast Guard District and is only effective until September 29, 2005. This is a temporary security zone designed specifically to protect high capacity passenger vessels during transit through the waters in the Seventeenth Coast Guard District until September 29, 2005. This temporary zone will only be effective for 70 days and will only apply to high capacity passenger vessels transiting under an escort as defined in this temporary final rule.

We did not publish a NPRM for this temporary regulation. Under 5 U.S.C. 553(b)(B) the Coast Guard finds that good cause exists for not publishing an NPRM because this rule is necessary to ensure the safe transit of high capacity passenger vessels. Publishing a NPRM would be contrary to public interest since immediate action is necessary to safeguard high capacity passenger vessels from sabotage and other subversive acts or accidents. This temporary security zone has been carefully designed to minimally impact the public while providing protections for high capacity passenger vessels. For the same reasons, the Coast Guard finds that good cause exists under 5 U.S.C. 553(d)(3) for making this rule effective less than 30 days after publication in the **Federal Register**.

Background and Purpose

Due to increased awareness that future terrorist attacks are possible, the Coast Guard, as Lead Federal Agency for maritime homeland security, has determined that the District Commander and the Captain of the Port must have the means to be aware of, detect, deter, intercept, and respond to asymmetric threats, acts of aggression, and attacks by terrorists on the American homeland while maintaining our freedoms and sustaining the flow of commerce. Terrorists have demonstrated both desire and ability to utilize multiple means in different geographic areas to successfully carry out their terrorist missions, highlighted by the recent events in London.

During the past 3 years, the Federal Bureau of Investigation has issued several advisories to the public concerning the potential for terrorist attacks within the United States. The October 2002 attack on a tank vessel, M/V LIMBURG, off the coast of Yemen and the prior attack on the USS COLE demonstrate a continuing threat to U.S. maritime assets as described in the President's finding in Executive Order 13273 of August 21, 2002 (67 FR 56215, September 3, 2002) and Continuation of the National Emergency with Respect to Certain Terrorist Attacks, (67 FR 58317, September 13, 2002); Continuation of the National Emergency With Respect To Persons Who Commit, Threaten To Commit, Or Support Terrorism, (67 FR 59447, September 20, 2002). Furthermore, the ongoing hostilities in Afghanistan and Iraq have made it prudent for U.S. port and waterway users to be on a higher state of alert because the Al Qaeda organization and other similar organizations have declared an ongoing intention to conduct armed attacks on U.S. interests worldwide.

In addition to escorting vessels, a security zone is a tool available to the Coast Guard that may be used to control maritime traffic operating in the vicinity of vessels, which the Coast Guard has determined need additional security measures during their transit. The District Commander has made a determination that it is necessary to establish a security zone around vessels that are escorted. This temporary regulation establishes security zones around escorted high capacity passenger vessels to protect these vessels, but also to safeguard the port, harbors or waterfront facilities they visit.

Discussion of Rule

This temporary security zone places a 100-yard security zone around high capacity passenger vessels that are being escorted by a Coast Guard surface, air or Coast Guard Auxiliary asset, or by a State law enforcement agency during their transit through the Seventeenth Coast Guard District. Persons desiring to transit within 100 yards of an escorted cruise ship transiting in the Seventeenth Coast Guard District must contact the designated on scene representative on VHF channel 16 (156.800 MHz) or VHF channel 13 (156.650 MHz) and obtain permission to transit within 100 yards of the escorted vessel. The boundaries of the Seventeenth Coast Guard District are defined in 33 CFR 3.85–1(b). This includes territorial waters 12 nautical miles from the territorial sea baseline as defined in 33 CFR part 2 subpart B.

Stationary vessels that are moored or anchored must remain moored or anchored when an escorted high capacity passenger vessels approaches within 100 yards of the stationary vessel unless the designated on scene representative has granted entry approval.

Regulatory Evaluation

This temporary rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS).

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

This finding is based on the relatively small size of the limited access area around each ship, the minimal amount of time that vessels will be restricted when the zone is being enforced and the short duration this temporary rule will be in effect. In addition, vessels that may need to enter the zones may request permission on a case-by-case basis from the District Commander, Captain of the Port or their designated representatives.

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 temporary security zone only applies to high capacity passenger vessels that are transiting with an escort. It does not apply when the vessels are moored or anchored in port. Furthermore, vessels desiring to enter the security zone may contact the designated on scene representative and request permission to enter the zone.

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 this rule so that they could better evaluate its effects on them and participate in the rulemaking process. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact LT Matthew York, District 17 (MOC), 709 West 9th St, Room 753, Juneau, Alaska 99801. 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 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 would not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Commandant Instruction M16475.lD,

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T17–003 to read as follows:

§ 165.T17–003 Security Zone; Waters of the Seventeenth Coast Guard District.

(a) *Definitions.* As used in this section—

Designated on Scene Representative means any U.S. Coast Guard commissioned, warrant or petty officer who has been authorized by the District Commander or local Captain of the Port (COTP), as defined in 33 CFR part 3, subpart 3.85, to act on his or her behalf.

Escorted high capacity passenger vessel means a high capacity passenger vessel that is accompanied by one or more Coast Guard assets or Federal, State or local law enforcement agency assets as listed below:

(1) Coast Guard surface or air asset displaying the Coast Guard insignia.

(2) State law enforcement asset displaying the applicable agency markings and or equipment associated with the agency.

State law enforcement officers means any State government law enforcement officer who has authority to enforce State criminal laws.

High Capacity Passenger Vessel means a passenger vessel greater than 100 feet in length that is authorized to carry more than 500 passengers for hire.

(b) *Location.* The following area is a security zone: 100-yard radius around escorted high capacity passenger vessels in the navigable waters of the Seventeenth Coast Guard District as defined in 33 CFR 3.85–1, from surface to bottom.

(c) *Regulations.* (1) No vessel may approach within 100 yards of a moving, escorted high capacity passenger vessel within the navigable waters of the Seventeenth Coast Guard District, unless traveling at the minimum speed necessary to navigate safely.

(2) Moored or anchored vessels, which are overtaken by this moving zone, must remain stationary at their location until the escorted vessel maneuvers at least 100 yards past.

(3) The local Captain of the Port may notify the maritime and general public by marine information broadcast of the periods during which individual security zones have been activated by providing notice in accordance with 33 CFR 165.7.

(4) Persons desiring to transit within 100 yards of a moving, escorted high capacity passenger vessel in the Seventeenth Coast Guard District must contact the designated on scene representative on VHF channel 16 (156.800 MHz), VHF channel 13 (156.650 MHz).

(5) If permission is granted to transit within 100 yards of an escorted high capacity passenger vessel, all persons and vessels must comply with the instructions of the District Commander, Captain of the Port or his or her designated representative.

Dated: July 21, 2005.

James C. Olson,

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

[FR Doc. 05–15061 Filed 7–28–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD09–05–101]

RIN 1625–AA00

Safety Zone; Rohrbach's Ontario Regatta, Hamlin Beach State Park, Monroe County, NY

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone restricting all vessel traffic on Lake Ontario, Near Hamlin Beach State Park, Monroe County, New York, due to Catamaran Sailboat Races, August 6, 2005 and August 7, 2005. This temporary safety zone is necessary to ensure the safety of both the participants and spectators of the sail boat races.

DATES: This rule is effective from 10 a.m. (local) on August 6, 2005 through 12 p.m. (local) on August 7, 2005.

ADDRESSES: Documents indicated in this preamble as being available in the docket, are part of docket [CGD09–05–101] and are available for inspection or copying at U.S. Coast Guard Marine Safety Office Buffalo, 1 Fuhrmann Blvd, Buffalo, New York 14203, between 8 a.m. (local) and 4 p.m. (local), Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LT Craig A. Wyatt, U. S. Coast Guard Marine Safety Office Buffalo (716) 843–9570.

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 permit application was not received in time to publish an NPRM followed by a final rule before the effective date. Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying this rule would be contrary to the public interest of ensuring the safety of spectators and vessels during this event and immediate action is necessary to prevent possible loss of life or property. The Coast Guard has not received any complaints or negative comments previously with regard to this event.

Background and Purpose

Temporary safety zones are necessary to ensure the safety of vessels and participants. Establishing a temporary safety zone to control vessel movement throughout a portion of Lake Ontario will help minimize risks associated with Catamaran boat races. Upon completion of the races, the Coast Guard Captain of the Port Buffalo or the designated on-scene representative will inform waterway users that the temporary safety zone is no longer being enforced via the Broadcast Notice to Mariners.

Discussion of Rule

The temporary safety zone will encompass all waters and adjacent

shoreline of Hamlin Beach State Park at the following location within a 2nm radius of 43°22′11″ N, 077°58′27″ W. The geographic coordinate is based upon North American Datum 1983 (NAD 83).

All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port Buffalo or the designated on-scene representative. Entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port Buffalo or the designated on-scene representative. The designated on-scene representative will be the Patrol Commander. The Captain of the Port Buffalo or the Patrol Commander may be contacted by radio on VHF channel 16.

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).

The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under 10(e) of the regulatory policies and procedures of (DHS) is unnecessary.

Small Entities

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

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

This rule would affect the following entities, some of which might be small entities: The owners or operators of recreational and commercial vessels intending to enter, transit or anchor in the temporary safety zone.

This safety zone would not have a significant economic impact on a substantial number of small entities for the following reasons: The temporary safety zone is only in effect for two days and vessel traffic can safely pass outside the proposed safety zone during the event and vessel traffic may be allowed to pass through the safety zone under Coast Guard escort with the permission of the Captain of the Port Buffalo or his designated on-scene representative. Before the effective period, we will issue maritime advisories to users of Lake Ontario by the Ninth Coast Guard District Local Notice to Mariners, and Marine Information Broadcasts. Facsimile broadcasts may also be made.

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. 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 Marine Safety Office Buffalo (see **ADDRESSES.**)

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

This rule 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 create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

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

Energy Effects

We have analyzed this 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 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. This event establishes a safety zone therefore paragraph (34)(g) of the Instruction applies.

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 amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. A new temporary § 165.T09–101 is added to read as follows:

§ 165.T09–101 Safety Zone; Rohrbach's Ontario Regatta, Hamlin Beach State Park, Monroe County, NY.

(a) *Location:* The following area is a temporary safety zone: all waters and adjacent shoreline of Hamlin Beach State Park at the following location within a 2nm radius of 43°22′11″ N, 077°58′27″ W. The geographic coordinate is based upon North American Datum 1983 (NAD 83).

(b) *Effective period:* This rule is effective from 10 a.m. (local) on August 6, 2005 through 12 p.m. (local) on August 7, 2005. This rule will be enforced between 10 a.m. until 5 p.m., on August 6, 2005 and 9 a.m. until 12 p.m., on August 7, 2005.

(c) *Regulations:* (1) In accordance with the general regulations in § 165.23 of this part, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Coast Guard Captain of the Port Buffalo or his designated on-scene representative.

(2) The ''on-scene representative'' of the Captain of the Port is any Coast Guard commissioned, warrant or petty officer who has been designated by the Captain of the Port to act on his behalf. The on-scene representative of the Captain of the Port will be the Patrol Commander. The Patrol Commander will be aboard either a Coast Guard or Coast Guard Auxiliary vessel. The Captain of the Port or the Patrol Commander may be contacted via radio on VHF Channel 16.

(3) Vessel operators desiring to enter or operate within the safety zone shall contact the Captain of the Port Buffalo or his on-scene representative to obtain permission to do so. Vessel operators given permission to enter or operate in the safety zone shall comply with all directions given to them by the Captain of the Port Buffalo or his on-scene representative.

Dated: July 20, 2005.

S.J. Ferguson,

Commander, U.S. Coast Guard, Captain Of The Port Buffalo.

[FR Doc. 05–15069 Filed 7–28–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD09–05–100]

RIN 1625–AA00

Safety Zone; Oswego Harbor Fest Fireworks, Lake Ontario, Oswego, NY

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for the Oswego Harbor Fireworks Display which will occur on July 30, 2005. This safety zone is necessary to control vessel traffic within the immediate location of the fireworks launch site and to ensure the safety of life and property during the event. This safety zone is intended to restrict vessel traffic from a portion of Lake Ontario.

DATES: This temporary final rule is effective from 9 p.m. on July 30, 2005 through 10 p.m. on July 30, 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 [CGD09–05–100] and are available for inspection or copying at: U.S. Coast Guard Marine Safety Office Buffalo, 1 Fuhrmann Blvd. Buffalo, NY 14203, between 8 a.m. and 4 p.m., Monday through Friday, except federal holidays.

FOR FURTHER INFORMATION CONTACT: LT Tracey Wirth, U.S. Coast Guard Marine Safety Office Buffalo, 1 Fuhrmann Blvd., Buffalo, NY 14203. The telephone number is (716) 843–9574.

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. Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The permit application was not received in time to publish an NPRM followed by a final rule before the effective date. Delaying this rule would be contrary to the public interest of ensuring the safety of spectators and vessels during this event and immediate action is necessary to prevent possible loss of life or property. The Coast Guard has not received any complaints or negative

comments previously with regard to this event.

Background and Purpose

Temporary safety zones are necessary to ensure the safety of vessels and spectators from the hazards associated with fireworks displays. Based on recent accidents that have occurred in other Captain of the Port zones, and the explosive hazard of fireworks, the Captain of the Port Buffalo has determined fireworks launches in close proximity to watercraft pose significant risks to public safety and property. The likely combination of large numbers of recreational vessels, congested waterways, darkness punctuated by bright flashes of light, alcohol use, and debris falling into the water could easily result in serious injuries or fatalities. Establishing safety zones to control vessel movement around the locations of the launch platforms will help ensure the safety of persons and property at these events and help minimize the associated risk.

Discussion of Rule

The safety zone will encompass all waters of Oswego Harbor, in Lake Ontario, within a 1,000-foot radius of the fireworks barge moored/anchored in approximate position 43°28′10″ N, 076°31′04″ W The geographic coordinates are based upon North American Datum 1983 (NAD 83). The size of this zone was determined using the National Fire Prevention Association guidelines and local knowledge concerning wind, waves, and currents.

All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on-scene patrol representative. Entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port Buffalo or his designated on-scene representative. The Captain of the Port or his designated on-scene representative may be contacted via VHF Channel 16.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866 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 this rule under that order. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS).

This determination is based on the minimal time that vessels will be restricted from the zone, and therefore minor if any impacts to Mariners.

Small Entities

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

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

This rule would affect the following entities, some of which might be small entities: The owners or operators of commercial vessels intending to transit or anchor in the activated safety zone.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: This safety zone is only in effect from 9 p.m. until 10 p.m. the day of the event and allows vessel traffic to pass outside of the safety zone. Before the effective period, we will issue maritime advisories widely available to users of Lake Ontario by the Ninth Coast Guard District Local Notice to Mariners, and Marine Information Broadcasts. Facsimile broadcasts may also be made.

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 rule so that they can better evaluate its effects and participate in the rulemaking process. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Marine Safety Office Buffalo (see **ADDRESSES.**)

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

Federalism

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

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this 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 rule would not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

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

Protection of Children

The Coast Guard has 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 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 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. 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.

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. This event establishes a safety zone therefore paragraph (34)(g) of the Instruction applies.

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.

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.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. A new temporary § 165.T09–100 is added to read as follows:

§ 165.T09–100 Safety Zone; Oswego Harbor Fest Fireworks, Lake Ontario, Oswego, NY.

(a) *Location.* The safety zone will encompass all waters of Oswego Harbor, in Lake Ontario, within a 1,000-foot radius of the fireworks barge moored/anchored in approximate position 43°28′10″ N, 076°31′04″ W. The geographic coordinates are based upon North American Datum 1983 (NAD 83).

(b) *Effective time and date.* This section is effective from 9 p.m. until 10 p.m. on July 30, 2005.

(c) *Regulations.* In accordance with the general regulations in 165.23 of this part, entry into this safety zone is prohibited unless authorized by the Coast Guard Captain of the Port Buffalo, or his designated on-scene representative.

Dated: July 20, 2005.

S.J. Ferguson,

Commander, U.S. Coast Guard, Captain of the Port Buffalo.

[FR Doc. 05–15072 Filed 7–28–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

33 CFR Part 334

United States Marine Corps Restricted Area and Danger Zone, Brickyard Creek and tributaries and the Broad River, Marine Corps Air Station, Beaufort, SC

AGENCY: United States Army Corps of Engineers, DoD.

ACTION: Final rule.

SUMMARY: The Corps of Engineers is amending its regulations to establish a restricted area and danger zone in Brickyard Creek (including a portion of the Atlantic Intracoastal Waterway), Mulligan Creek, Albergottie Creek and Salt Creek in the vicinity of the Marine Corps Air Station (MCAS) in Beaufort, South Carolina. The MCAS restricted area contains six sections that are contiguous to Brickyard, Albergottie and Salt Creeks, and two sections that are located on the northern border of the MCAS that encompasses Mulligan Creek. In addition, these regulations establish a restricted area in the Broad River in the vicinity of Laurel Bay Military Family Housing Area, which is associated with the Marine Corps Air Station. The purpose of these regulations is to provide effective security in the vicinity of the Marine Corps Air Station and the Laurel Bay Military Family Housing Area.

EFECTIVE DATE: August 29, 2005.

ADDRESSES: U. S. Army Corps of Engineers, ATTN: CECW–CO, 441 G Street, NW., Washington, DC 20314–1000.

FOR FURTHER INFORMATION CONTACT: Mr. David Olson, U.S. Army Corps of Engineers, Headquarters, Washington, DC at 202–761–4922, or Mr. Dean Herndon, U.S. Army Corps of Engineers, Charleston District, at (843) 329–8044.

SUPPLEMENTARY INFORMATION: Pursuant to its authorities in Section 7 of the Rivers and Harbors Act of 1917 (40 Stat 266; 33 U.S.C. 1) and Chapter XIX, of the Army Appropriations Act of 1919 (40 Stat 892; 33 U.S.C. 3) the Corps is amending the restricted area regulations at 33 CFR 334 by adding Section 334.475, which would establish a restricted area (including eight sections) and one danger zone in the vicinity of the Marine Corps Air Station and one restricted area in the vicinity of the Laurel Bay Military Family Housing Area in Beaufort, South Carolina. The sections of the restricted area are

described in detail in the regulation in paragraphs (a)(1) through (a)(9). The new danger zone is described in paragraph (a)(10). This regulation will allow the Commander, Marine Corps Air Station, Beaufort, to restrict passage of persons, watercraft, and vessels at his or her discretion in interest of National Security until such time he or she determines such restrictions may be terminated.

Procedural Requirements:

a. Review under Executive Order 12866.

This rule is issued with respect to a military function of the Department of Defense and the provisions of Executive Order 12866 do not apply.

b. Review under the Regulatory Flexibility Act.

This rule has been reviewed under the Regulatory Flexibility Act (Public Law 96–354), which requires the preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small entities (*i.e.*, small businesses and small governments). The Corps expects that the economic impact of the establishment of this restricted area would have practically no impact on the public, no anticipated navigational hazard or interference with existing waterway traffic, and accordingly, certifies that this proposal if adopted, will have no significant economic impact on small entities.

c. Review under the National Environmental Policy Act.

An environmental assessment has been prepared for this action. We have concluded, based on the minor nature of the proposed additional restricted area regulations, that this action will not have a significant impact to the quality of the human environment, and preparation of an environmental impact statement is not required. The environmental assessment may be reviewed at the District office listed at the end of **FOR FURTHER INFORMATION CONTACT**, above.

d. Unfunded Mandates Act.

This rule does not impose an enforceable duty among the private sector and, therefore, is not a Federal private sector mandate and is not subject to the requirements of Section 202 or 205 of the Unfunded Mandates Act. We have also found under Section 203 of the Act, that small governments will not be significantly and uniquely affected by this rulemaking.

List of Subjects in 33 CFR part 334

Danger zones, Marine safety, Restricted areas, Waterways.

■ For the reasons set out in the preamble, the Corps of Engineers amends 33 CFR part 334 as follows:

PART 334—DANGER ZONES AND RESTRICTED AREA REGULATIONS

■ 1. The authority citation for part 334 continues to read as follows:

Authority: 40 Stat. 266 (33 U.S.C. 1) and 40 Stat. 892 (33 U.S.C. 3).

■ 2. Section 334.475 is added to read as follows:

§ 334.475 Brickyard Creek and tributaries and the Broad River at Beaufort, SC.

(a) *The areas:* (1) That section of the Atlantic Intracoastal Waterway (AIWW), beginning at the confluence of the AIWW and Albergottie Creek, being that point on the west side of the AIWW navigational channel at latitude 32.457226°, longitude 80.687770°, thence continuing in a northerly direction along the western channel edge of the AIWW to latitude 32.458580°, longitude 80.689181°, thence to latitude 32.460413°, longitude 80.689228°, thence to latitude 32.461459°, longitude 80.689418°, thence to latitude 32.464015°, longitude 80.690294°, thence to latitude 32.470255°, longitude 80.690965°, thence to latitude 32.471309°, longitude 80.691196°, thence to latitude 32.475084°, longitude 80.692455°, thence to latitude 32.478161°, longitude 80.691546°, thence to latitude 32.479191°, longitude 80.691486°, thence to latitude 32.481817°, longitude 80.691939°, thence to latitude 32.493001°, longitude 80.689835°, thence to latitude 32.494422°, longitude 80.688296°, thence to latitude 32.49727°, longitude 80.69172° on the east shore of the Marine Corps Air Station (MCAS), at its intersection with the Station's property boundary line, thence heading south along the eastern shoreline of the MCAS to a point along the northern shoreline of Mulligan Creek at latitude 32.48993°, longitude 80.69836°, thence southwesterly across Mulligan Creek to the shoreline of the MCAS, latitude 32.48771°, longitude 80.70424°, thence continuing along the eastern shoreline to its intersection with Albergottie Creek, latitude 32.45360°, longitude 80.70128, thence continuing along the southern shoreline of the MCAS to the intersection of Salt Creek with U.S. Highway 21, latitude 32.45047°, longitude 80.73153°, thence back down the southern creek edge of Salt and Albergottie Creeks, thence back to the starting point at the confluence of Albergottie Creek and the AIWW, latitude 32.457226°, longitude 80.687770°. **Note:** Situated within the boundaries of the area described in paragraph (a)(1) of this section are the areas described in paragraphs (a)(2), (a)(3), (a)(4), (a)(5) and the danger zone described in paragraph (a)(10) of this section. Since additional regulations apply to these sections, they are excluded from the area described in paragraph (a)(1) given that they are more strictly regulated.

(2) That portion of Mulligan Creek located on the southern side of the MCAS runway, beginning at a point on the eastern shoreline of Mulligan Creek at latitude 32.48993°, longitude 80.69836°, thence southwesterly across Mulligan Creek to the shoreline of the MCAS, latitude 32.48771°, longitude 80.70424°, thence continuing in a northerly direction along the eastern shoreline of the MCAS, thence in a northeasterly direction along the and southern side of the MCAS runway, thence back down the eastern shoreline of Mulligan Creek to its starting point, latitude 32.48993°, longitude 80.69836°.

(3) That area adjacent to the Atlantic Intracoastal Waterway (AIWW), situated within the boundaries of the area described in paragraph (a)(1) of this section, beginning at a point on the west side of the AIWW navigational channel at latitude 32.463732°, longitude 80.690208°, thence continuing in a northerly direction along the western channel edge of the AIWW to latitude 32.467999°, longitude 80.690749°, thence turning in a westerly direction and continuing to latitude 32.467834°, longitude 80.700080°, on the eastern shore of the MCAS, thence heading in a southward direction along the shoreline to latitude 32.463692°, longitude 80.698440°, thence turning in a westerly direction and returning back to the starting point on the west edge of the AIWW channel, latitude 32.463732°, longitude 80.690208°.

(4) That area contiguous to Albergottie Creek, situated within the boundaries of the area described in paragraph (a)(1) of this section, beginning at a point on the southern shoreline of the MCAS at latitude 32.452376°, longitude 80.708263°, thence continuing in a northerly direction along the shoreline, up to the shoreline adjacent to Kimes Avenue and back down the opposite shoreline in a southerly direction to a point at latitude 32.450643°, longitude 80.715653°, thence turning in a easterly direction and returning back to the starting point at latitude 32.452376°, longitude 80.708263°.

(5) That area contiguous to Salt Creek, situated within the boundaries of the area described in paragraph (a)(1) of this section, beginning at a point on the southern shoreline of the MCAS and the

edge of Salt Creek at latitude 32.45194°, longitude 80.724473°, thence continuing in a northerly direction along the shoreline of the MCAS and continuing on to its intersection again with Salt Creek and adjacent to U.S. Highway 21, thence turning and continuing along the shoreline of Salt Creek in an easterly direction and returning back to the starting point at latitude 32.45194°, longitude 80.724473°.

(6) That section of the Atlantic Intracoastal Waterway (AIWW), beginning at the confluence of the AIWW and Albergottie Creek, being that point on the west side of the AIWW navigational channel at latitude 32.457226°, longitude 80.687770°, thence continuing in a northerly direction along the western channel edge of the AIWW to latitude 32.458580°, longitude 80.689181°, thence to latitude 32.460413°, longitude 80.689228°, thence to latitude 32.461459°, longitude 80.689418°, thence to latitude 32.464015°, longitude 80.690294°, thence to latitude 32.470255°, longitude 80.690965°, thence to latitude 32.471309°, longitude 80.691196°, thence to latitude 32.475084°, longitude 80.692455°, thence to latitude 32.478161°, longitude 80.691546°, thence to latitude 32.479191°, longitude 80.691486°, thence to latitude 32.481817°, longitude 80.691939°, thence to latitude 32.493001°, longitude 80.689835°, thence to latitude 32.494422°, longitude 80.688296°, thence crossing the AIWW channel in a southeasterly direction to a point on the east side of the AIWW and the marsh edge of bank, latitude 32.49343°, longitude 80.68699°, thence southward along the edge of the AIWW and the waterward marsh edge of Ladies Island to a point on the west shoreline of Pleasant Point Peninsular, latitude 32.45806°, longitude 80.68668°, thence back across the AIWW navigational channel to the point of beginning, latitude 32.457226°, longitude 80.687770°.

(7) That portion of Mulligan Creek, beginning at its northern mouth and confluence with McCalleys Creek, latitude 32.50763°, longitude 80.69337°, thence proceeding in a westerly direction along the northern shoreline of Mulligan Creek to its intersection with Perryclear Drive bridge crossing, latitude 32.50534°, longitude 80.69960°, thence back down the southern shoreline to its starting point at McCalleys Creek, latitude 32.50763°, longitude 80.69337°.

(8) That portion of Mulligan Creek, beginning at the Perryclear Drive bridge crossing, latitude 32.50534°, longitude 80.69960°, thence proceeding in a south westerly direction along the northern shoreline of Mulligan Creek to the terminus of its western tributary, thence back down its southern shoreline to the terminus of its eastern terminus located at the northern end on the MCAS runway, latitude 32.49531°, longitude 80.70658°, thence back down the southern shoreline to its starting point at Perryclear Drive bridge crossing, latitude 32.50534°, longitude 80.69960°.

(9) *(Laurel Bay Military Family Housing Area, Broad River)* That section of the Broad River, beginning on the western shoreline of Laurel Bay Military Family Housing Area boundary line, at latitude 32.449295°, longitude 80.803205°, thence proceeding in a northerly direction along the shoreline to the housing area northern boundary line at latitude 32.471172°, longitude 80.809795°, thence proceeding a distance of 500 feet into the Broad River, latitude 32.471185°, longitude 80.811440°, thence proceeding in a southerly direction and maintaining a distance of 500 feet from the shoreline to latitude 32.449222°, longitude 80.804825°, thence back towards the shoreline to the point of beginning at latitude 32.449295°, longitude 80.803205°.

(10) (Danger zone). That portion of Mulligan Creek located adjacent to the MCAS firing range and the restricted area described in paragraph (a)(2) of this section, beginning at a point on the western shoreline of Mulligan Creek at latitude 32.48771°, longitude 80.70424°, thence northeasterly across Mulligan Creek to the opposite shoreline at latitude 32.48993°, longitude 80.69836°, thence continuing in a southeasterly direction to an upland island bordering the northern shoreline of Mulligan Creek at latitude 32.48579°, longitude 80.69706°, thence turning in a southwesterly direction and crossing Mulligan Creek to a point on the eastern shoreline of the MCAS at latitude 32.48533°, longitude 80.70240°, thence continuing along the eastern shoreline of the MCAS to its starting point at latitude 32.48771°, longitude 80.70424°.

(b) *The regulation:* (1) Unauthorized personnel, vessels and other watercraft shall not enter the restricted areas described in paragraphs (a)(2), (a)(3), (a)(4), (a)(5) and (a)(8) of this section at any time.

(2) The public shall have unrestricted access and use of the waters described in paragraph (a)(6) of this section whenever the MCAS is in Force Protection Condition Normal, Alpha or Bravo. Whenever the facility is in Force Protection Condition Charlie or Delta, personnel, vessels and other watercraft entering the restricted area described in paragraph (a)(6) of this section shall proceed at normal speed and shall under no circumstances anchor, fish, loiter or photograph in any way until clear of the restricted area.

(3) The public shall have unrestricted access and use of the waters described in paragraphs (a)(1), (a)(7), and (a)(9) of this section whenever the MCAS is in Force Protection Condition Normal Alpha or Bravo. Whenever the facility is in Force Protection Condition Charlie or Delta, personnel, vessels and other watercraft are prohibited from entering the waters described in paragraphs (a)(1), (a)(7), and (a)(9) of this section, unless they first obtain an escort or other approval from the Commander, MCAS, Beaufort, South Carolina.

(4) Unauthorized personnel, vessels and other watercraft shall not enter the danger zone described in paragraph (a)(10) of this section at any time.

(5) All restricted areas and danger zones will be marked with suitable warning signs.

(6) It is understood that none of the restrictions herein will apply to properly marked Federal vessels performing official duties.

(7) It is further understood that unauthorized personnel will not take photographs from within the above described restricted areas.

(c) *Enforcement:* The regulation in this section, promulgated by the United States Army Corps of Engineers, shall be enforced by the Commanding Officer, MCAS Beaufort, or persons or agencies as he/she may authorize including any Federal Agency, State, Local or County Law Enforcement agency, or Private Security Firm in the employment of the facility, so long as the entity undertaking to enforce this Restricted Area has the legal authority to do so under the appropriate Federal, State or local laws.

Dated: July 22, 2005.

Michael B. White,

Chief, Operations Division, Directorate of Civil Works.

[FR Doc. 05–15040 Filed 7–28–05; 8:45 am]

BILLING CODE 3710–92–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–7945–9]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Direct final deletion of the North Sea Municipal Landfill Superfund Site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA), Region 2, announces the deletion of the North Sea Municipal Landfill Superfund Site (Site), located in Southampton, New York, from the National Priorities List (NPL) and requests public comment on this action. While the Site is located in Southampton, New York, it is erroneously listed on the NPL as being located in the City/County of North Sea. The NPL is Appendix B of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR part 300, which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended. This Direct Final Notice of Deletion is being published by EPA with the concurrence of the State of New York, through the New York State Department of Environmental Conservation (NYSDEC). EPA and NYSDEC have determined that responsible parties or other persons have implemented all appropriate response actions required to public health or the environment.

DATES: This direct final deletion will be effective September 27, 2005 unless EPA receives significant adverse comments by August 29, 2005. If significant adverse comments are received, EPA will publish a timely withdrawal of the direct final deletion in the **Federal Register**, informing the public that the deletion will not take effect.

ADDRESSES: Written comments should be mailed to: Caroline Kwan, Remedial Project Manager, Emergency and Remedial Response Division, U.S. Environmental Protection Agency, Region 2, 290 Broadway, 20th floor, New York, NY 10007–1866.

Information Repositories: Comprehensive information about the Site is available for viewing and copying at the Site information repositories located at: U.S. Environmental Protection Agency, Region 2, 290 Broadway, Superfund Record Center, Room 1828, New York, NY 10007–1866. Hours: Monday to Friday from 9 a.m. to 5 p.m., Telephone No. (212) 637–4308, Southampton College, Reference Department, 239 Montauk Highway, Southampton, New York 11968–4100, Hours: Monday to Friday till August 12, 2005 from 9 a.m. to 6 p.m., Closed from August 13 till September 5, reopening on September 6, Monday to Thursday from 10 a.m. to 9 p.m., Saturday: 12 p.m. to 5 p.m., Telephone No. 631–287–8379, The Rogers Memorial Library (Reference Department), 91 Coopers Farms Road, Southampton, New York 11968–4002, Hours: Monday to Thursday from 10 a.m. to 9 p.m., Friday: 10 a.m. to 7 p.m., Saturday: 10 a.m. to 5 p.m. , Sunday: 1 p.m. to 5 p.m., Telephone No. (632) 283–0774.

FOR FURTHER INFORMATION CONTACT: Ms. Caroline Kwan, Remedial Project Manager, Emergency and Remedial Response Division, U.S. Environmental Protection Agency, Region 2, 290 Broadway, 20th floor, New York, NY 10007–1866, (212) 637–4275; Fax Number (212) 637–4284; email address: *kwan.caroline@epa.gov.*

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis for Site Deletion
V. Deletion Action

I. Introduction

EPA Region 2 announces the deletion of the North Sea Municipal Landfill Superfund Site (Site) from the National Priorities List (NPL). The EPA maintains the NPL as the list of those sites that appear to present a significant risk to public health or the environment. Sites on the NPL can have remedial actions financed by the Hazardous Substance Superfund. As described in § 300.425(e)(3) of the NCP, a site deleted from the NPL remains eligible for remedial actions if conditions at the site warrant such action.

EPA considers this action to be noncontroversial and routine, and therefore, EPA is taking it without prior publication of a Notice of Intent to Delete. This action will be effective September 27, 2005 unless EPA receives significant adverse comments by August 29, 2005 on this action or on the parallel Notice of Intent to Delete published in the Notice section of today's **Federal Register**. If significant adverse comments are received within the 30-day public comment period of this action or the Notice of Intent to Delete, EPA will publish a timely withdrawal of this Direct Final Deletion before the effective date of the deletion and the deletion will not take effect. EPA will, if appropriate, prepare a response to comments and continue with the deletion process on the basis of the Notice Intent to Delete and the comments already received. In such a case, there will be no additional opportunity to comment.

Section II explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses the Site and demonstrates how it meets the deletion criteria.

II. NPL Deletion Criteria

Section 300.425(e) of the NCP provides that Sites may be deleted from the NPL where no further response is appropriate. In accordance with § 300.425(e)(1), EPA shall consult with the State to determine whether any of the following criteria have been met:

i. Responsible parties or other parties have implemented all appropriate response actions required; or,

ii. All appropriate Fund-financed responses under CERCLA have been implemented, and no further action by responsible parties is appropriate; or

iii. The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, implementing remedial measures is not appropriate.

In addition, the State shall concur with the deletion, as required by § 300.425(e)(2), and the public shall be informed, as required by § 300.425(e)(4). A site which is deleted from the NPL does remain eligible for remedial actions should future conditions warrant such action, as set forth in § 300.425(e)(3). Even if a site is deleted from the NPL, where hazardous substances, pollutants, or contaminants remain at the deleted site above levels that allow for unlimited use and unrestricted exposure, CERCLA section 121(c), 42 U.S.C. 9621(c) requires that a subsequent review of the site be conducted at least every five years after the initiation of the remedial action at the deleted site to ensure that the action remains protective of public health and the environment. If new information becomes available which indicates a need for further action, EPA may initiate remedial actions. Whenever there is a significant release from a site deleted from the NPL, the deleted site may be restored to the NPL without application of the hazard ranking system.

III. Deletion Procedures

The following procedures apply to deletion of the Site.

(1) The Site was listed on the NPL in June 1986. The North Sea Municipal Landfill Property (Landfill Property) includes several former disposal areas, including landfill cells and former septic sludge lagoons. The Superfund Site is composed of what was identified as Cell No.1, the decommissioned septic sludge lagoons, groundwater in the

vicinity of the Landfill Property, and the nearby Fish Cove. The other two cells, Cells No. 2 and 3, are closed and monitored by the New York State Department of Environmental Conservation (NYSDEC), and they are not included within the NPL Site.

(2) On March 31, 1987, The Town of Southampton (Town) entered into Administrative Consent Order pursuant to CERCLA with EPA. The Order required the Town to conduct a Remedial Investigation and Feasibility Study (RI/FS).

(3) On September 29, 1989 , EPA issued a Record of Decision for Operable Unit One (OU 1 ROD) selecting landfill closure for Cell No. 1 and confirmatory sampling of the decommissioned septic sludge lagoons.

(4) EPA and the Town entered into a Consent Decree in February 1991 regarding the implementation of the remedy selected in the OU 1 ROD.

(5) On September 28, 1992, EPA issued a second Record of Decision at the Site, for Operable Unit 2 (OU 2 ROD), which set forth that no further action was required concerning groundwater emanating from the Landfill Property and extending to Fish Cove.

(6) Construction was completed in September 1994 for the OU 1 source control remedy.

(7) A Preliminary Close Out Report documenting the completion of the implementation of the remedy selected in the OU 1 ROD was issued by EPA on September 21, 1994.

(8) The deed, access, and well restrictions required to prevent exposure to Site contaminants are in place. The Town, the owner of the Landfill Property, has placed deed restrictions on the future use of the Landfill Property in the property's deed. Fencing to restrict access was determined to be unnecessary because of a natural border of woodlands around the Landfill Property, but a fence was installed at the perimeter of the Cell No. 1 recharge basin. Lastly, Suffolk County Department of Health helps enforce the ban on private wells in the vicinity of the Landfill Property groundwater plume through implementing its Private Water Systems standards. All existing homes have been connected to the public water service. All new construction requires a permit from the Health Department to install a well. Such permit will not be issued as this would be in violation of the ban.

(9) The First Five-Year Review for the Site was completed by EPA on September 1998, in which EPA concluded that human health and the environment are being protected by the remedial action implemented at the Site.

(10) A Second Five-Year Review was completed on September 30, 2003, in which EPA again concluded that human health and the environment are being protected by the remedial action implemented at the Site.

(11) The Town has been conducting quarterly groundwater monitoring since December 1998. Monthly gas monitoring has been performed since January 2002.

(12) Benthic survey investigations were conducted in September 2001 and July 2004 by the Town.

(13) Routine operation and maintenance of the Cell No. 1 capping system is being performed by the Town.

(14) EPA consulted with the NYSDEC on the deletion of this Site from the NPL, and NYSDEC has concurred with the deletion.

(14) If no significant adverse comments are received related to this Direct Final Notice of Deletion, the Site will be deleted. If significant adverse comments are received within the 30-day public comment period established for this Direct Final Action or the Notice of Intent to Delete published in today's **Federal Register**, EPA will publish a timely notice of withdrawal of this Direct Final Deletion before its effective date. EPA will prepare, if appropriate, a response to comments and continue with the deletion process on the basis of the notice of Intent to Delete and the comments already received.

(15) EPA has placed copies of documents supporting the deletion in the Site information repositories identified above.

Deletion of a site from the NPL does not itself create, alter, or revoke any individual's rights or obligations. Deletion of a site from the NPL does not in any way alter EPA's right to take enforcement actions, as appropriate. The NPL is the list of uncontrolled hazardous substance releases in the United States that are priorities for long-term remedial evaluation and response.

IV. Basis for Site Deletion

The following summary provides a brief description of the Site and the actions taken that provide the basis for recommending deletion of the Site from the NPL.

The 131-acre Landfill Property is located, is owned by the Town. Starting in 1963, the Landfill Property was used for the disposal of municipal solid waste, refuse, and septic system waste. The Town accepted waste from residential, industrial, and commercial sources. Significant features of the Landfill Property include Cell No. 1, Cell No. 2, Cell No. 3 and the septic sludge lagoons. All three landfill cells were capped and closed in accordance with New York State landfill closure regulations in place at the time. The septic lagoons, located at the south end of the property, were excavated and refilled to grade with sandy loam in 1986. The Site as addressed under the Federal Superfund Program consists of Cell No. 1, the decommissioned septic sludge lagoons, groundwater in the vicinity of the Landfill Property, and the nearby Fish Cove. Cells No. 2 and 3 are closed and monitored by NYSDEC, and they are not part of the NPL Site.

The Site is located in the Township of Southampton, even though it is erroneously listed on the NPL as being located in North Sea. The property is at the intersection of Majors Path and Old Fish Cove Road. The nearest surface water is Fish Cove, which is located approximately 1500 feet northwest of the Landfill Property. Groundwater in this area ultimately discharges to Fish Cove, which is an arm of Little Peconic Bay. The area between Fish Cove and the Landfill Property is moderately populated.

In the late 1960's, a series of 14 scavenger lagoons, approximately 50 feet long, 10 feet deep, 25 feet wide and 50 feet above the water table were constructed at the southern portion of the Landfill Property. These septic sludge lagoons accepted septic system wastes from both commercial and residential sources. Sludge was allowed to drain and dry, and it was subsequently disposed of in Cell No. 1. It is estimated that 11 million gallons of septic wastes were disposed in these lagoons. The lagoons were decommissioned in 1985 and most of their solid and liquid content were removed. After this removal, an additional two feet of soil was excavated. The septic sludge lagoons were refilled to grade with sandy loam.

A groundwater monitoring program, initiated by the Town in 1979, revealed a plume of contamination migrating from Cell No. 1 to Fish Cove. The plume contained lead, manganese and cadmium. A second plume was discovered originating from the septic sludge lagoons. The presence of nitrate/nitrite in this plume indicated the presence of septic wastes. In addition to the typical landfill leachate parameters and heavy metals noted, organics (i.e., dichloroethane, tetrachloroethene and trichloroethene) were also detected in the groundwater at the Site.

Most of the homes near the Landfill Property had obtained their drinking water from wells in the highly permeable Upper Glacial aquifer. The detection of contaminated groundwater

migrating northwest from the Landfill Property resulted in the closure of several private domestic wells. Public water supplies were extended to serve residents in the affected areas. Based on the above, Cell No.1 and the septic sludge lagoons were investigated and placed on the Superfund NPL in 1986. As a result of the EPA's initial efforts to place the Landfill on the NPL, Cell No. 1 was closed by the Town in 1985. Cell closure consisted of the following activities; capping the top, flat portion of the Cell No. 1 (approximately eight acres in area) with a 20 mil poly-vinyl chloride (PVC) membrane to minimize infiltration, installation of a silty sand protective layer (approximately two feet thick) above the membrane, and placement of a topsoil cover to support vegetation. The Town also installed a storm water diversion/collection system to improve area drainage. The system, installed along the haul road, included manholes (which were utilized for inlet collection), interconnecting piping and a recharge basin to which all runoff was routed.

EPA and the Town entered into an Administrative Order on Consent in March 1987. Under the Order, the Town agreed to conduct an RI/FS. The RI/FS was initiated in August 1987. The OU 1 RI/FS findings indicated that leachate constituent concentrations were not decreasing with time. In 1985, prior to the listing of the Site on the NPL, a cap had been constructed on Cell No. 1 on the plateau area only, but it was not adequate to eliminate leachate generation. The OU 1 ROD was signed in September 1989 which addressed, among other things, any deficiencies in that capping system.

The OU 1 ROD selected remedy consisted of the following:

(i) Covering Cell No. 1 with a low permeability cap while undertaking action consistent with New York State (Part 360) sanitary landfill closure requirements.

(ii) No action at the former septic sludge lagoons other than confirmatory sampling.

(iii) Installation of a six-foot high chain link fence around the Site to restrict access.

(iv) Deed restrictions on future use of the Landfill Property.

(v) Long-term operation and maintenance to provide inspection and repairs to the Cell No. 1 cap system.

(vi) Long-term air and water quality monitoring of both the former septic sludge lagoons and Cell No. 1.

EPA negotiated a Consent Decree with the Town in which the Town agreed to implement the remedy set forth in the OU 1 ROD. The Consent Decree was entered with the United States District Court for the Eastern District of New York in August 1990. The capping of Cell No. 1 utilized the existing 20 mil PVC liner (previously installed in 1985) located on the plateau area of the Cell and involved minor regrading and capping of the side slopes with a geomembrane. Approximately 0.5 acres on the east side slope required capping with a concrete revetment because the slope grade was steeper than 33 percent. The structural regrading of Cell No. 1 included demolition of two concrete drainage manholes and regrading of the area to promote overland flow of storm water. Because access to the 130-acre Landfill Property is limited as a result of wooded area which surrounds it, EPA allowed the perimeter fence to be eliminated from the design. Instead, the fence was installed only at the perimeter of the recharge basin. EPA and NYSDEC approved the final remedial design in September 1992.

The Town conducted confirmatory sludge and soil sampling of the septic sludge lagoons during January 1992. All data collected were validated using full Contract Laboratory Program analytical and quality assurance/quality control procedures. The sludge/soil sampling results confirmed that the ''no action'' alternative for the septic sludge lagoon remediation was appropriate. The final report was approved in September 1992. EPA and NYSDEC conducted a final inspection on September 21, 1994.

The Town, which is the owner of the Landfill Property, has placed deed restrictions on the future use of the Landfill Property in the property's deed. Lastly, Suffolk County Department of Health enforces the ban on private wells in the vicinity of the Landfill Property groundwater plume through implementing its Private Water Systems standards. All existing homes have been connected to the public water service. All new construction requires a permit from the Health Department to install a well. Such permit will not be issued as this would be in violation of the ban.

EPA approved a Post-Closure Monitoring and Maintenance Operations (O&M) Manual in December 2001. The O&M Manual provides for a long-term monitoring program for the cover system, the drainage system, and the groundwater and the gas-monitoring systems. The O&M Manual requires quarterly groundwater monitoring at selected wells. Quarterly groundwater sampling has been conducted by the Town since December 1998. EPA issued a Remedial Action report on September 28, 1995. O&M monitoring results indicated that the remedial system implementing the remedy selected in the OU 1 ROD as designed and constructed was performing satisfactorily.

For OU 2, the Town installed additional groundwater monitoring wells and resampled existing wells at the Site. NYSDEC collected samples of hard clams from Fish Cove and analyzed them for priority pollutant metals. The results indicated that the clams did not present a health risks to consumers. Based on the OU 2 risk assessment, EPA determined that the groundwater contamination did not pose a threat to human health or the environment. In September 1992, EPA selected a ''no action'' remedy for OU 2.

Hazardous substances remain at the Site above levels that would allow for unlimited use with unrestricted exposure. Pursuant to Section 121(c) of CERCLA, EPA reviews site remedies where such hazardous substances, pollutants, or contaminants remain no less often than every five years after the initiation of a remedy at a site. EPA, Region 2, has conducted such Five-Year Reviews of the Site in September 1998 and in September 2003. Both Five-Year Reviews led EPA to conclude that human health and the environment are being protected by the remedial action implemented at the Site. The next Five-Year Review is scheduled to be completed before September 2008.

Public participation activities for this Site have been satisfied as required in CERCLA § 113(k) and Section 117. As part of the remedy selection process, the public was invited to comment on EPA's proposed remedies. All other documents and information which EPA relied on or considered in recommending this deletion are available for the public to review at the information repositories identified above.

One of the three criteria for site deletion is when ''responsible parties or other persons have implemented all appropriate response actions required'' (40 CFR 300.425(e)(1)(I)). EPA, with the concurrence of the State of New York through NYSDEC, have determined that all required and appropriate response actions have been implemented. Therefore, EPA is proposing deletion of this Site from the NPL.

V. Deletion Action

The EPA with concurrence of the State of New York, has determined that all appropriate responses under CERCLA have been completed, and that no further response actions, under CERCLA, other than O&M and five-year reviews, are necessary. Therefore, EPA is deleting the Site from the NPL. Because EPA considers this action to be

noncontroversial and routine, EPA is taking it without prior publication. This action will be effective September 27, 2005 unless EPA receives adverse comments by August 29, 2005. If adverse comments are received within the 30-day public comment period, EPA will publish a timely withdrawal of this direct final notice of deletion before the effective date of the deletion and it will not take effect and, EPA will prepare a response to comments and continue with the deletion process on the basis of the notice of intent to delete and the comments already received. There will be no additional opportunity to comment.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Natural resources, Oil pollution, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: July 22, 2005.

George Pavlou,

Acting Regional Administrator, USEPA, Region 2.

■ 40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

■ 1. The authority citation for part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR 1991 Comp., p. 351; and E.O. 12580, 52 FR 2923, 3 CFR 1987 Comp., p. 193.

Appendix B to Part 300 (Amended)

■ 2. Table 1 of Appendix B to part 300 is amended under New York (NY) by removing the site name ''North Sea Municipal Landfill'' and the corresponding City/County designation ''North Sea.''.

[FR Doc. 05–15044 Filed 7–28–05; 8:45 am]

BILLING CODE 6560–50–P

Proposed Rules

Federal Register
Vol. 70, No. 145
Friday, July 29, 2005

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 205

[Doc. No. TM–05–02]

National Organic Program; Proposed Amendment to the National List of Allowed and Prohibited Substances (Livestock)

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the U.S. Department of Agriculture's (USDA) National List of Allowed and Prohibited Substances (National List) to reflect one recommendation submitted to the Secretary by the National Organic Standards Board (NOSB). Consistent with the recommendation from the NOSB, this proposed rule would revise the annotation of one substance on the National List, Methionine, to extend its use in organic poultry production until October 21, 2008.

DATES: Comments must be received by August 15, 2005.

ADDRESSES: Interested persons may comment on this proposed rule using the following procedures:

- Mail: Comments may be submitted by mail to: Arthur Neal, Director of Program Administration, National Organic Program, USDA–AMS–TMP–NOP, 1400 Independence Ave., SW., Room 4008–So., Ag Stop 0268, Washington, DC 20250.
- E-mail: Comments may be submitted via the Internet to: *National.List@usda.gov.* or to *http://www.regulations.gov.*
- Fax: Comments may be submitted by fax to: (202) 205–7808.
- Written comments on this proposed rule should be identified with the docket number TM–05–02. Commenters should identify the topic and section number of this proposed rule to which the comment refers.
- Clearly indicate if you are for or against the proposed rule or some portion of it and your reason for it. Include recommended language changes as appropriate.
- Include a copy of articles or other references that support your comments. Only relevant material should be submitted.

It is our intention to have all comments to this proposed rule, whether submitted by mail, E-mail, or fax, available for viewing on the National Organic Program (NOP) homepage. Comments submitted in response to this proposed rule will be available for viewing in person at USDA–AMS, Transportation and Marketing, Room 4008–South Building, 1400 Independence Ave., SW., Washington, DC, from 9 a.m. to 12 noon and from 1 p.m. to 4 p.m., Monday through Friday (except official Federal holidays). Persons wanting to visit the USDA South Building to view comments received in response to this proposed rule are requested to make an appointment in advance by calling (202) 720–3252.

FOR FURTHER INFORMATION CONTACT: Arthur Neal, Director of Program Administration, Telephone: (202) 720–3252; Fax: (202) 205–7808.

SUPPLEMENTARY INFORMATION:

I. Background

On December 21, 2000 the Secretary established, within the NOP regulations [7 CFR part 205], the National List regulations (National List) (§§ 205.600 through 205.607). The National List identifies synthetic substances that are allowed and nonsynthetic substances that are prohibited in organic crop and livestock production. The National List also identifies nonsynthetic and synthetic substances that are allowed for use in certified handling operations. Under the authority of the Organic Foods Production Act of 1990 (OFPA), as amended, (7 U.S.C. 6501 *et seq.*), the National List can be amended by the Secretary based on proposed amendments developed by the NOSB. Since established, the National List has been amended twice, October 31, 2003 (68 FR 61987), and November 3, 2003 (68 FR 62215).

This proposed rule would amend the National List to reflect one recommendation submitted to the Secretary by the NOSB on March 3, 2005. Based on their evaluation of a petition submitted by industry participants, the NOSB recommended that the Secretary amend § 205.603(d)(1) of the National List by revising the annotation of Methionine, a feed additive, to extend its use in organic poultry production until October 21, 2008. The use of Methionine in organic production was evaluated by the NOSB using the evaluation criteria specified in OFPA (7 U.S.C. 6517–6518).

A 15-day comment period has been deemed appropriate to allow interested persons to respond to this proposed rule. Fifteen days is deemed appropriate because, under the NOP regulations (7 CFR part 205.603(d)), the authorized use of Methionine will expire for organic poultry operations on October 21, 2005. Final rulemaking to extend the use of Methionine in organic poultry production, if adopted, should be completed before October 21, 2005. Any comments that are received timely will be considered before a final determination is made in this matter.

II. Overview of Proposed Amendment

The following provides an overview of the proposed amendment made to § 205.603 of the National List:

Section 205.603 Synthetic Substances Allowed for Use in Organic Livestock Production

This proposed rule would revise current paragraph (d)(1) of § 205.603 as follows:

DL-Methionine, DL-Methionine-hydroxyl analog, and DL-Methionine-hydroxyl analog calcium (CAS #–59–51–8; 63–68–3; 348–67–4)—for use only in organic poultry production until October 1, 2008.

Methionine was petitioned for its continued use as a synthetic feed additive in organic poultry operations. Methionine is a colorless or white crystalline powder that is soluble in water. It is classified as an amino acid and considered to be an essential amino acid that is regulated as an animal feed nutritional supplement by the Food and Drug Administration (21 CFR 582.5475).

Methionine was originally included on the National List on October 31, 2003 with an early expiration date of October 21, 2005, (the normal time period for the use of a substance contained in the National List is five years, beginning with the date the substance appears on the National List regulations).

Methionine was petitioned by organic livestock producers as a part of the NOSB's 1995 initial review of synthetic amino acids considered for use in organic livestock production. The petitioners asserted that Methionine was a necessary dietary supplement for organic poultry, due to an inadequate supply of organic feeds containing sufficient concentrations of naturally-occurring Methionine. Petitioners suggested synthetic Methionine would be fed as a dietary supplement to organic poultry at levels ranging from 0.3 to 0.5 percent of the animal's total diet. The petitioners also asserted that a prohibition on the use of synthetic Methionine would contribute to nutritional deficiencies in organic poultry thereby jeopardizing the animal's health After consideration of the justification provided for the inclusion of Methionine and an assessment under the evaluation criteria provided in OFPA (7 U.S.C. 6517–6518), the NOSB considered the use of synthetic Methionine to be consistent with OFPA and recommended its inclusion onto the National List for use in organic poultry production with an early expiration on its use (October 21, 2005). The NOSB recommended an early expiration on the use of Methionine to encourage the organic poultry industry to phase out the use of synthetic Methionine in poultry diets and develop non-synthetic alternatives to its use as a feed additive.

Since the inclusion of Methionine on § 205.603(d)(1) of the National List on October 31, 2003, the organic poultry industry has been unable to develop suitable non-synthetic alternatives for the substitution of synthetic Methionine in organic poultry diets. As a result, on January 10, 2005, the two organic poultry producers petitioned the NOSB to extend the use of Methionine in organic poultry production beyond October 21, 2005, to provide additional time for development of non-synthetic alternatives. Preliminary research results on nonsynthetic alternatives to synthetic Methionine was provided to the NOSB. Although considered inconclusive, the preliminary results have demonstrated that research trials were underway to identify non-synthetic alternatives for phasing out synthetic Methionine in organic poultry diets.

The NOSB, at its February 28–March 3, 2005, meeting in Washington, DC, received and evaluated public comment on the petition to extend the use of Methionine in organic poultry production beyond October 21, 2005. The NOSB concluded that Methionine is consistent with the evaluation criteria of 7 U.S.C. 6517 and 6518 of the OFPA; however, the NOSB maintained that non-synthetic alternatives must be developed during the additional extension on the use of synthetic Methionine in organic poultry diets. Therefore, the NOSB recommended Methionine be added to the National List for use only in organic poultry production until October 1, 2008, so that the organic poultry industry could continue its research to develop non-synthetic alternatives for the use of synthetic Methionine.

In response to the NOSB recommendation regarding the use of DL-Methionine in organic livestock production, this action proposes to amend § 205.603(d)(1) of the National List regulation as follows:

DL-Methionine, DL-Methionine-hydroxyl analog, and DL-Methioninehydroxyl analog calcium (CAS #–59–51–8; 63–68–3; 348–67–4)—for use in organic poultry production until October 1, 2008.

III. Related Documents

Two notices were published regarding the meeting of the NOSB and its deliberations on the recommendation and substance petitioned for amending the National List. The substance and recommendation included in this proposed rule were announced for NOSB deliberation in the following **Federal Register** Notices: (1) 66 FR 48654, September 21, 2001, and (2) 70 FR 7224, February 11, 2005, (Methionine). The substance and recommendation in this proposed rule was initially submitted for proposed rulemaking in the **Federal Register** Notice, FR 68 18556, April 16, 2003, and added to the National List as final rule in the **Federal Register** Notice, FR 68 61987, October 31, 2003.

IV. Statutory and Regulatory Authority

The Organic Foods Production Act of 1990 (OFPA), as amended (7 U.S.C. 6501 *et seq.*), authorizes the Secretary, at § 6517(d)(1), to make amendments to the National List based on proposed amendments developed by the NOSB. Sections 6518(k)(2) and 6518(n) of OFPA authorize the NOSB to develop proposed amendments to the National List for submission to the Secretary and establish a petition process by which persons may petition the NOSB for the purpose of having substances evaluated for inclusion onto or deletion from the National List. The National List petition process is implemented under § 205.607 of the NOP regulations. The current petition process (65 FR 43259, July 13, 2000) can be accessed through the NOP Web site at *http://www.ams.usda.gov/nop*.

A. Executive Order 12866

This action has been determined to be non-significant for purposes of Executive Order 12866, and therefore, does not have to be reviewed by the Office of Management and Budget.

B. Executive Order 12988

Executive Order 12988 instructs each executive agency to adhere to certain requirements in the development of new and revised regulations in order to avoid unduly burdening the court system. The final rule adding Methionine to the National List was reviewed under this Executive Order and no additional related information has been obtained since then. This proposed rule is not intended to have a retroactive effect.

States and local jurisdictions are preempted under § 2115 of the OFPA (7 U.S.C. 6514) from creating programs of accreditation for private persons or State officials who want to become certifying agents of organic farms or handling operations. A governing State official would have to apply to USDA to be accredited as a certifying agent, as described in § 2115(b) of the OFPA (7 U.S.C. 6514(b)). States are also preempted under §§ 2104 through 2108 of the OFPA (7 U.S.C. 6503 through 6507) from creating certification programs to certify organic farms or handling operations unless the State programs have been submitted to, and approved by, the Secretary as meeting the requirements of the OFPA.

Pursuant to § 2108(b)(2) of the OFPA (7 U.S.C. 6507(b)(2)), a State organic certification program may contain additional requirements for the production and handling of organically produced agricultural products that are produced in the State and for the certification of organic farm and handling operations located within the State under certain circumstances. Such additional requirements must: (a) Further the purposes of the OFPA, (b) not be inconsistent with the OFPA, (c) not be discriminatory toward agricultural commodities organically produced in other States, and (d) not be effective until approved by the Secretary.

Pursuant to § 2120(f) of the OFPA (7 U.S.C. 6519(f)), this regulation would not alter the authority of the Secretary under the Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*), the Poultry Products Inspection Act (21 U.S.C. 451 *et seq.*), or the Egg Products Inspection Act (21 U.S.C. 1031 *et seq.*), concerning meat, poultry, and egg products, nor any of the authorities of the Secretary of

Health and Human Services under the Federal Food, Drug and Cosmetic Act (21 U.S.C. 301 *et seq.*), nor the authority of the Administrator of the Environmental Protection Agency (EPA) under the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. 136 *et seq.*).

Section 2121 of the OFPA (7 U.S.C. 6520) provides for the Secretary to establish an expedited administrative appeals procedure under which persons may appeal an action of the Secretary, the applicable governing State official, or a certifying agent under this title that adversely affects such person or is inconsistent with the organic certification program established under this title. The OFPA also provides that the U.S. District Court for the district in which a person is located has jurisdiction to review the Secretary's decision.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) requires agencies to consider the economic impact of each rule on small entities and evaluate alternatives that would accomplish the objectives of the rule without unduly burdening small entities or erecting barriers that would restrict their ability to compete in the market. The purpose is to fit regulatory actions to the scale of businesses subject to the action. Section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the rulemaking is not expected to have a significant economic impact on a substantial number of small entities.

Pursuant to the requirements set forth in the RFA, the Agricultural Marketing Service (AMS) performed an economic impact analysis on small entities in the final rule published in the **Federal Register** on December 21, 2000 (65 FR 80548). The AMS has also considered the economic impact of this action on small entities and has determined that this proposed rule would have an impact on a substantial number of small entities. However, AMS has determined that the impact on entities affected by this proposed rule would not be significant. The effect of this proposed rule would be to allow the use of additional substances in agricultural production and handling. This action would relax the regulations published in the final rule and would provide small entities with more tools to use in day-to-day operations. The AMS concludes that the economic impact of this addition of allowed substances, if any, would be minimal and entirely beneficial to small agricultural service firms. Accordingly, the Administrator of the AMS hereby certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Small agricultural service firms, which include producers, handlers, and accredited certifying agents, have been defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than $6,000,000 and small agricultural producers are defined as those having annual receipts of less than $750,000.

The U.S. organic industry at the end of 2001 included nearly 6,600 certified crop and livestock operations, including organic production and handling operations, producers, and handlers. These operations reported certified acreage totaling more than 2.34 million acres, 72,209 certified livestock, and 5.01 million certified poultry. Data on the numbers of certified handling operations are not yet available, but likely number in the thousands, as they would include any operation that transforms raw product into processed products using organic ingredients. Growth in the U.S. organic industry has been significant at all levels. From 1997 to 2001, the total organic acreage grew by 74 percent, livestock numbers certified organic grew by almost 300 percent over the same period, and poultry certified organic increased by 2,118 percent over this time. Sales growth of organic products has been equally significant, growing on average around 20 percent per year. Sales of organic products were approximately $1 billion in 1993, but reached $15 billion in 2004. In addition, since the implementation of OPFA on October 21, 2002, USDA has accredited 97 certifying agents who have applied to USDA to be accredited in order to provide certification services to producers and handlers. A complete list of names and addresses of accredited certifying agents may be found on the AMS NOP Web site, at *http://www.ams.usda.gov/nop*. AMS believe that most of these entities would be considered small entities under the criteria established by the SBA.

D. Paperwork Reduction Act

Pursuant to the Paperwork Reduction Act of 1995, 44 U.S.C. 3501, *et seq.*, the existing information collection requirements for the NOP are approved under OMB number 0581–0181. No additional collection or recordkeeping requirements are imposed on the public by this proposed rule. Accordingly, OMB clearance is not required by section 350(h) of the Paperwork Reduction Act, or OMB's implementing regulation at 5 CFR part 1320.

E. General Notice of Public Rulemaking

This proposed rule reflects recommendations submitted to the Secretary by the NOSB for extending the use of Methionine, a synthetic substance, in organic poultry production until October 21, 2008. The NOSB evaluated this substance using criteria in the OFPA. The substance's evaluation was initiated by a petition from two organic poultry producers. The NOSB has determined that no wholly natural substitute product is presently available. Loss of the use of this substance would disrupt many well-established and accepted organic poultry operations. Therefore, this substance is presently a necessary component of a nutritionally adequate diet for organic poultry. Accordingly, AMS believes that a 15-day period for interested persons to comment on this rule is appropriate.

List of Subjects in 7 CFR Part 205

Administrative practice and procedure, Agriculture, Animals, Archives and records, Imports, Labeling, Organically produced products, Plants, Reporting and recordkeeping requirements, Seals and insignia, Soil conservation.

For the reasons set forth in the preamble, 7 CFR part 205, subpart G is proposed to be amended as follows:

PART 205—NATIONAL ORGANIC PROGRAM

1. The authority citation for 7 CFR part 205 continues to read as follows:

Authority: 7 U.S.C. 6501–6522.

2. Section 205.603, paragraph (d)(1) is revised to read as follows:

§ 205.603 Synthetic substances allowed for use in organic livestock production.

* * * * *

(d) * * *

(1) DL-Methionine, DL-Methionine-hydroxyl analog, and DL-Methionine-hydroxyl analog calcium (CAS #—59–51–8; 63–68–3; 348–67–4)—for use in organic poultry production until October 1, 2008.

* * * * *

Dated: July 25, 2005.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 05–14987 Filed 7–28–05; 8:45 am]

BILLING CODE 3410–02–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 701 and 741

Uninsured Secondary Capital Accounts

AGENCY: National Credit Union Administration (NCUA).

ACTION: Proposed rule.

SUMMARY: The National Credit Union Administration (NCUA) seeks public comment on a proposal to allow low-income designated credit unions that offer secondary capital accounts to begin redeeming the funds in those accounts when they are within five years of maturity, and to require prior approval of a plan for the use of secondary capital before such accounts can be offered.

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

ADDRESSES: You may submit comments by any one 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 Proposed Rule Part 701, Secondary Capital'' 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.

FOR FURTHER INFORMATION CONTACT: Steven W. Widerman, Trial Attorney, Office of General Counsel, at 703/518–6557; or Margaret Miller, Program Officer, Office of Examination and Insurance, at 703/518–6375.

SUPPLEMENTARY INFORMATION:

A. Background of Uninsured Secondary Capital Accounts

Authorization of Secondary Capital. The NCUA Board is authorized by law to permit credit unions serving predominantly low-income members to receive payments on shares from non-natural persons under conditions the Board sets. 12 U.S.C. 1757(6). In 1996, the NCUA Board amended section 701.34 of its rules and regulations to authorize low-income designated credit unions (''LICUs''),[1] including State-chartered credit unions to the extent permitted by State law, to offer uninsured secondary capital (''SC'') accounts to non-natural person members and nonmembers. 12 CFR 701.34(b). The accounts were intended to provide LICUs a further means—beyond setting aside a portion of income—to build capital in order to serve two purposes: To support greater lending and financial services in their communities, and to absorb losses and prevent the credit union from failing. 61 FR 3788 (Feb. 2, 1996).

To ensure the safety and soundness of the LICUs that offered SC accounts, and to ensure that the accounts serve the intended purposes, existing section 701.34(b) imposes a variety of conditions. 61 FR at 3788. These conditions apply to State-chartered LICUs as well. 12 CFR 741.204. A LICU may offer SC accounts only after submitting a written plan for the use and repayment of the accounts. § 701.34(b)(1). The accounts must be established as uninsured, non-share instruments. § 701.34(b)(2) and (5). They must have a minimum maturity of 5 years and may not be redeemable prior to maturity. § 701.34(b)(3)–(4). An account holder's claim against an offering LICU must be subordinate to all other claims of shareholders, creditors and the Share Insurance Fund. § 701.34(b)(6). And most importantly, SC funds on deposit (including interest paid into the account) must be available to cover losses in excess of the LICU's net available reserves and undivided earnings. § 701.34(b)(7). The funds used to cover such losses may not be replenished or restored to the SC account. *Id.*

Net Worth Value. Beginning at 5 years remaining maturity, existing § 701.34(c)(1) requires an offering LICU to discount the capital value (now called ''net worth value'') of its SC accounts at the rate of 20 percent per year. The purpose of discounting the net worth value is: To discourage overreliance on SC accounts to cover future operating losses; to encourage LICUs to continually replenish their sources of maturing SC; and to facilitate net worth growth to support the expansion of lending and financial services in their communities. 61 FR at 3788, 3789. Even as its capital value is discounted, however, the full amount of SC on deposit remains available to cover losses. § 701.34(c)(2).

Prompt Corrective Action. In 2000, pursuant to Congressional mandate, NCUA adopted a system of ''prompt corrective action'' (''PCA'') consisting of mandatory minimum capital standards indexed by a credit union's ''net worth ratio'' to five statutory net worth categories.[2] 12 U.S.C. 1790d; 12 CFR 702; 65 FR 8560 (Feb. 18, 2000). A credit union whose net worth ratio puts it in the top category, ''well capitalized'', is essentially free of PCA. But as a credit union's net worth ratio falls and its classification among the net worth categories declines below ''well capitalized,'' it is exposed to an expanding range of mandatory and discretionary supervisory actions designed to restore net worth. *E.g.,* 12 CFR 702.201(a), 702.202(a), 702.204(b).

Effect on LICUs. The original purpose of discounting the net worth value of SC beginning at 5 years remaining remains vital today. Under PCA, however, the requirement to do so reduces a LICU's net worth ratio. While the ''net worth'' side of the ratio is discounted at the rate of 20 percent annually, the ''assets'' side of the ratio must remain the same because, as currently written, § 701.34(b) prohibits the redemption of SC accounts prior to maturity. § 701.34(b)(4). Redeeming SC accounts would correct the imbalance between the ''net worth'' and ''assets'' sides of the ratio. Without the ability to redeem SC accounts, discounting net worth value will dilute a LICU's net worth ratio, possibly causing its classification among the net worth categories to fall and triggering further PCA.

A significant number of LICUs are exposed to the possibility that discounting the value of their SC will dilute their net worth ratio. December 2004 Call Report data shows that 55 of the 1019 LICUs offer SC accounts. These accounts have an aggregate balance of $19.7 million. The number of LICUs offering SC accounts has remained relatively stable in recent years. Of the 55 LICUs presently offering SC accounts, 48 are classified ''well capitalized'' and 4 are classified ''adequately capitalized,'' indicating that 95 percent currently have net worth

[1] The NCUA Board is authorized by law to define ''credit unions serving predominantly low-income members.'' 12 U.S.C. 1757(6). To be so designated by the appropriate Regional Director, the NCUA Board generally requires the majority of a credit union's members to earn less than 80 percent of the average national wage as determined by the Bureau of Labor Statistics, or to have annual household incomes below the national median as determined by the Census Bureau. 12 CFR 701.34(a)(2)–(3).

[2] The ''net worth'' of a LICU is defined as its retained earnings per GAAP plus any SC. 12 U.S.C. 1790d(o)(2); 12 CFR 702.2(f). The ''net worth ratio'' of a credit union is the ratio of its net worth to its total assets. 12 U.S.C. 1790d(o)(3); 12 CFR 702.2(g) and (k).

ratios that subject them to little or no PCA. A principal purpose of this rule is to prevent the discounting of SC from diluting the net worth of LICUs that offer SC accounts.

B. Proposed Modifications to Existing Section 701.34

1. Redemption of Secondary Capital

Existing § 701.34(b)(4) prohibits a LICU from redeeming SC accounts at any time prior to their maturity. As explained above, however, the requirement to discount SC threatens to dilute a LICU's net worth ratio if it cannot also redeem the SC no longer recognized as net worth (''discounted SC'') at the same time. To protect LICUs from this threat, the proposed rule adds new subsection (d) permitting LICU's to redeem discounted SC under certain conditions, and eliminates the restriction on redemption in existing § 701.34(b).

Approval to Redeem. To redeem SC, the proposed rule requires a LICU to first obtain the approval of the appropriate Regional Director (''RD''). If the LICU is State-chartered, the proposed rule adds a new subsection (d) to § 741.204, requiring the approval of the appropriate State Supervisory Authority (''SSA'') with the concurrence of the RD. A request to redeem must be submitted in writing for each year preceding maturity (unless the RD indicates in writing that the approval is for more than one year). If, within 45 days of the RD's receipt of its request to redeem, a LICU is not notified of the RD's and/or SSA's decision on the request, the LICU may proceed with the proposed redemption.

To obtain approval to redeem, the following redemption risks must be addressed:

First, the LICU must show sufficient post-redemption net worth to be ''well capitalized.'' *See* note 2 *supra.* Being classified in the top net worth category frees a credit union of PCA. But as soon as net worth declines below ''well capitalized,'' PCA forces that credit union to start rebuilding net worth by making quarterly transfers of earnings to net worth. 12 CFR 702.201(a). If not ''well capitalized,'' however, a LICU that is ''adequately capitalized'' may seek RD approval to redeem, which will be granted or denied on a case-by-case basis (provided the other redemption criteria below are met).

Second, the SC funds to be redeemed must have been on deposit for at least two years. This requirement only affects SC having a 5-year maturity; SC with a maturity greater than 5 years is ineligible for redemption. LICUs generally incorporate the receipt of SC into their long-term business plans and financial budgets. Allowing a LICU to redeem that SC within the first two years can impair its ability to implement its strategic and business plans, and to achieve its budget objectives and financial stability. For example, a LICU's business plan might call for a rapid and substantial expansion of products and services offered to members. In turn, the expenses associated with this expansion, including loan losses, could increase accordingly. Without a track record of the expenses these products and services entail, it is impossible to accurately project the full extent of these expenses; it can only be estimated. The purpose of the 2-year waiting period is to allow the actual expenses to be realized and to permit the expansion of products and services to stabilize. The track record that develops during that period will show the extent to which discounted SC may be needed to absorb the expenses and thus should not be redeemed.

Third, the LICU must demonstrate that the SC funds to be redeemed will not be needed to cover losses prior to maturity of the account. As previously noted, an essential feature of SC is its availability to cover operating losses in excess of net worth. For this reason, a redemption request should be denied when there is a reasonable expectation that discounted SC will be needed to cover post-redemption operating losses occurring prior to maturity of the account.

Fourth, the LICU must demonstrate that its books and records are current and reconciled. The purpose of this requirement is straightforward: To make sure the RD who is evaluating a redemption request has complete, accurate and up to date financial data to assess the LICU's financial condition and to verify its compliance with full and fair disclosure requirements.

Fifth, the LICU must identify any other funding that might be affected by the redemption of SC. For example, the Department of the Treasury's Community Development Financial Institutions (''CDFI'') Fund may provide a LICU funding in the form of SC subject to a contractual condition that the LICU raise and hold matching SC from another source. If the LICU redeems the matching SC, it may be contractually required to redeem an equal measure of CDFI funding. Non-SC matching nonmember deposits and grants also may be similarly impacted if SC is redeemed prior to maturity.

Finally, the request for approval to redeem must be authorized by a resolution of the LICU's board of directors. A board resolution documents that a majority of the board participated in a board decision. Maximum board member participation in deciding to redeem SC helps to overcome possible conflicts of interest between LICU officials and officials of the SC account holder.

Schedule for Redemption. For redemption requests that are approved, the proposed rule prescribes a schedule for redeeming SC accounts that is reciprocal to existing § 701.34(b)'s schedule for recognizing the net worth value of those accounts:

Remaining maturity	Redemption limit (percent)
Four to less than five years ..	20
Three to less than four years	40
Two to less than three years	60
One to less than two years ..	80

To the extent a proportion of SC is no longer recognized as net worth under the existing net worth recognition schedule, that same proportion may be redeemed under the redemption schedule. For example, when between ''four to less than five years'' remain until maturity, 80 percent of value of the account is recognized as net worth, meaning that 20 percent is not. *See* § 701.34(c)(1)(i). As the schedule above shows, the proposed rule allows the LICU to redeem the 20 percent that is no longer recognized as net worth. The last year of remaining maturity is omitted from the schedule because the maturity of the account effectively redeems the remaining SC. Balancing net worth recognition with redemption of SC protects a LICU's net worth ratio from being diluted.

2. Approval of Plan for Use of Secondary Capital

Existing § 701.34(b) requires a LICU seeking to offer SC accounts to ''adopt, and forward to the appropriate Regional Director, a written plan for the use of the funds'' in those accounts and ''subsequent liquidity needs'' to repay them upon maturity. § 701.34(b)(1). In the case of a LICU that is State-chartered, that plan must be submitted to both the RD and the SSA. 12 CFR 741.204(c). But in neither case do the existing rules require an SC plan to be approved before a LICU can offer SC accounts.

Inappropriate Use of Secondary Capital. In practice, SC sometimes is not used to achieve the goals for which it was conceived, *i.e.* building capital to support expansion of lending and financial services in LICUs'

communities, and serving as a cushion against losses. 61 FR 3788 (Feb. 2, 1996). Between 1999 and 2004, twenty-eight LICUs that offer SC accounts have been liquidated or merged, forcing the Share Insurance Fund to step in and absorb losses in nine cases. SC played a role in masking the magnitude of other problems (such as inefficient operations leading to an unreasonably high ratio of net operating expenses to assets, and inadequate underwriting) that led to most of these liquidations. To ensure safe and sound use of SC, the proposed rule requires prior approval—not just submission—of a LICU's SC plan, and establishes evaluation criteria for such plans.

Evaluation and Approval of Plan. The proposed rule revises existing § 701.34(b)(1) to require RD approval of the written SC plan that a LICU presently must submit before offering SC accounts. In the case of a State-chartered LICU, the rule revises § 741.204(c) to require SSA approval of the SC plan with the concurrence of the RD. Approval will be required only for plans submitted on or after the effective date of a final rule; existing SC plans will not be affected. If, within 45 days of an RD's receipt of an SC plan submitted for approval, a LICU is not notified of the RD's and/or SSA's decision on the plan, the LICU may proceed to offer SC accounts pursuant to the plan.

The proposed rule adds two more evaluation criteria to the two that existing § 701.34(b)(1) already prescribes for an SC plan (*i.e.*, what the SC will be used for and how it will be repaid when the accounts mature): It must demonstrate that the proposed use of SC conforms to the offering LICU's strategic plan, business plan and budget; and it must be supported by accompanying pro forma financial statements, including any off-balance sheet items, covering a minimum of the next two years. The purpose of these criteria is to project and document the future financial performance of the LICU in relation to the risks associated with offering SC accounts.

3. Clarification of Disclosure Requirements

Existing § 701.34(b)(11) requires that a ''Disclosure and Acknowledgment'' form ''as set forth in the Appendix to this section be provided to and executed by'' the SC account investor. The form recites the key terms and regulatory limitations that distinguish SC accounts (*e.g.*, that they are uninsured, subordinate to all other claims, and available to cover operating losses in excess of net worth) as well as the individual terms of each investment (*e.g.*, investor's name, amount, term, how accrued interest is to be paid). The purpose of the form is to make sure ''there is no misunderstanding on the part of the investors as to the nature of the accounts and the risks involved.'' 61 FR at 3788.

Proof of Disclosure. In many cases, the parties may see only a reprint or facsimile of the Appendix containing the ''Disclosure and Acknowledgment'' form without referring to § 701.34(b)(11), which clearly says who must sign it. But the Appendix itself does not specify who must sign the form—an official of the institutional investor or an official of the offering LICU—or require that person to date the form to show when it was provided to the investor. This ambiguity and lack of a date has led to misunderstandings, if not disputes, about when, if at all, the nature of SC accounts and the risks involved were disclosed to institutional investors.

A credit union official's signature on the form is no proof that the investor ever got the form, let alone when. And without a date, the signature of an institutional investor's official proves the form was received, but not when—before or after the funds were deposited in the SC account—thus failing to document that the investor was informed of the terms, limitations and risks before investing.[3] The proposed rule rectifies this problem simply by including at the bottom of the form a signature block specifically for an official of the institutional investor that reads: ''ACKNOWLEDGED AND AGREED TO this _____ day of (month and year) by (name of investor's official, name of investor, address and phone number of investor, and investor's tax identification number).''

Option to Redeem. Consistent with new subsection (d) allowing SC accounts to be redeemed, the proposed rule eliminates the ''Disclosure and Acknowledgment'' form's provision barring redemption prior to maturity. To also ensure that the option to redeem SC accounts remains with the offering LICU throughout, the proposed rule goes a step further, adding a provision to the form stating that SC accounts are ''redeemable only at the option of the offering credit union.'' This will prevent LICUs and their institutional investors from agreeing by contract in advance of making an SC investment that the LICU will redeem it later on regardless of what circumstances may arise afterward.

4. Other Modifications

Apart from the substantive modifications explained above, the proposed rule makes several conforming and clarifying adjustments to existing § 701.34. The references to ''reserves and undivided earnings'' in existing § 701.34(b)(7) and the corresponding provision of the Appendix have been changed to ''net worth'' to reflect the adoption of that term pursuant to PCA. *See* 12 U.S.C. 1790d(o)(2). Existing §§ 701.34(b)(12) and (13) have been combined in a single, abbreviated section explaining the PCA authority to prohibit payment of principal, interest and dividends on SC accounts established after August 7, 2000. Finally, the ''scale'' used in existing § 701.34(c)(1) to recognize the capital value of SC accounts has been converted to schedule form to match the form of the corresponding redemption schedule in new subsection (d).

Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis describing any significant economic impact a proposed regulation may have on a substantial number of small credit unions (those having under $10 million in assets). The proposed rule allows credit unions to redeem secondary capital accounts when they are within five years of maturity, without imposing any additional regulatory burden. If adopted, the proposed rule will not have a significant economic impact on a substantial number of small credit unions. Thus, 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 regulatory actions on State and local interests. NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily adheres to the fundamental federalism principles addressed by the executive order. This proposed rule

[3] Existing § 701.34(b)(10) requires the parties to execute a ''contract agreement * * * accurately establishing the terms and conditions of this section and containing no provisions inconsistent therewith.'' In practice, however, it is unclear that such contracts consistently and reliably do that—all the more reason that investors should receive the ''Disclosure and Acknowledgement'' before investing in an SC account.

would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, this proposed rule does not constitute a policy that has federalism implications for purposes of the Executive Order.

Treasury and General Government Appropriations Act, 1999

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

Agency Regulatory Goal

NCUA's goal is to promulgate clear, understandable regulations that impose a minimal regulatory burden. The proposed rule seeks to improve and simplify the existing rule on uninsured secondary capital accounts. We request your comments on whether the proposed rule would be understandable and minimally intrusive if implemented as proposed.

List of Subjects in 12 CFR Parts 701 and 741

Bank deposit insurance, Credit Unions, Reporting and recordkeeping requirements.

By the National Credit Union Administration Board on July 21, 2005.

Mary F. Rupp,

Secretary of the Board.

For the reasons set forth above, 12 CFR parts 701 and 741 are proposed to be amended as follows:

PART 701—ORGANIZATION AND OPERATIONS OF FEDERAL CREDIT UNIONS

1. The authority citation for part 701 continues to read as follows:

Authority: 12 U.S.C. 1752(5), 1755, 1756, 1757, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1787, 1789 and Public Law 101–73. Section 701.6 is also authorized by 31 U.S.C. 3717. Section 701.31 is also authorized by 12 U.S.C. 1601 *et seq.*, 42 U.S.C. 1981 and 42 U.S.C. 3601–3610. Section 701.35 is also authorized by 12 U.S.C. 4311–4312.

2. Amend § 701.34 as follows:

a. Revise the section heading to read as set forth below;

b. Revise paragraphs (b) and (c) to read as set forth below;

c. Add new paragraph (d) before the Appendix to § 701.34 to read as set forth below; and

d. Revise the Appendix to § 701.34 following new paragraph (d) to read as follows:

§ 701.34 Designation of low income status; Offering of secondary capital accounts by low-income designated credit unions.

* * * * *

(b) *Offering of secondary capital accounts by low-income designated credit unions.* A Federal credit union having a designation of low-income status pursuant to paragraph (a) of this section may offer secondary capital accounts to nonnatural person members and nonnatural person nonmembers subject to the following conditions:

(1) *Secondary capital plan.* Prior to offering secondary capital accounts, the credit union shall adopt, and forward to the appropriate NCUA Regional Director for approval, a written ''secondary capital plan'' that, at a minimum:

(i) Identifies the purpose(s) for which secondary capital will be used; and how it will be repaid;

(ii) Explains how the credit union will provide for subsequent liquidity to repay secondary capital upon maturity of the accounts;

(iii) Demonstrates that the planned uses of secondary capital conform to the offering credit union's strategic plan, business plan and budget; and

(iv) Includes supporting pro forma financial statements including any off-balance sheet items, covering a minimum of the next two years.

(2) *Decision on plan.* If a LICU is not notified within 45 days of receipt of a secondary capital plan that the plan is approved or disapproved, the LICU may proceed to offer secondary capital accounts pursuant to the plan.

(3) *Nonshare account.* The secondary capital account must be established as an uninsured secondary capital account or other form of non-share account.

(4) *Minimum maturity.* The maturity of the secondary capital account must be a minimum of five years.

(5) *Uninsured account.* The secondary capital account shall not be insured by the National Credit Union Share Insurance Fund or any governmental or private entity.

(6) *Subordination of claim.* The secondary capital account holder's claim against the credit union must be subordinate to all other claims including those of shareholders, creditors and the National Credit Union Share Insurance Fund.

(7) *Availability to cover losses.* Funds deposited into the secondary capital account, including interest accrued and paid into the secondary capital account, must be available to cover operating losses realized by the credit union that exceed its net available net worth (exclusive of secondary capital and allowance accounts for loan and lease losses), and to the extent funds are so used, the credit union shall under no circumstances restore or replenish the account. The credit union may, in lieu of paying interest into the secondary capital account, pay interest accrued on the secondary capital account directly to the investor or into a separate account from which the secondary capital investor may make withdrawals. Losses shall be distributed pro-rata among all secondary capital accounts held by the credit union at the time the losses are realized.

(8) *Security.* The secondary capital account may not be pledged or provided by the account-holder as security on a loan or other obligation with the credit union or any other party.

(9) *Merger or dissolution.* In the event of merger or other voluntary dissolution of the credit union, other than merger into another low-income designated credit union, the secondary capital accounts will, to the extent they are not needed to cover losses at the time of merger or dissolution, be closed and paid out to the account-holder.

(10) *Contract agreement.* A secondary capital account contract agreement must be executed by an authorized representative of the account holder and the credit union, accurately establishing the terms and conditions of this section and containing no provisions inconsistent therewith.

(11) *Disclosure and acknowledgement.* A ''Disclosure and Acknowledgment'' as set forth in the Appendix to this section must be executed by an authorized representative of the offering credit union and of the secondary capital account holder at the time of entering into the account agreement. An original of the account agreement and the ''Disclosure and Acknowledgment'' must be retained by the credit union for the term of the agreement, and a copy must be provided to the account holder.

(12) *Prompt corrective action.* As provided in §§ 702.204(b)(11), 702.304(b) and 702.305(b) of this chapter, the NCUA Board may prohibit a credit union classified ''critically undercapitalized'' or a ''new'' credit union classified ''moderately capitalized'', ''marginally capitalized'', ''minimally capitalized'' or ''uncapitalized'', as the case may be, from paying principal, dividends or interest on its uninsured secondary capital accounts established after August 7, 2000, except that unpaid dividends or interest shall continue to

accrue under the terms of the account to the extent permitted by law.

(c) *Accounting treatment; Recognition of net worth value of accounts.*

(1) *Equity account.* A low-income designated credit union that issues secondary capital accounts pursuant to paragraph (b) of this section shall record the funds on its balance sheet in an equity account entitled ''uninsured secondary capital account.''

(2) *Schedule for recognizing net worth value.* For such accounts with remaining maturities of less than five years, the credit union shall reflect the net worth value of the accounts in its financial statement in accordance with the following schedule:

Remaining maturity	Recognized net worth value (percent)
Four to less than five years ..	80
Three to less than four years	60
Two to less than three years	40
One to less than two years ..	20
Less than one year	0

(3) *Financial statement.* The credit union will reflect the full amount of the secondary capital on deposit in a footnote to its financial statement.

(d) *Redemption of secondary capital.* With the written approval of the appropriate Regional Director, secondary capital that is not recognized as net worth under paragraph (c)(2) of this section (''discounted secondary capital'') may be redeemed according to the remaining maturity schedule in paragraph (d)(3) of the section.

(1) *Request to redeem secondary capital.* A request for approval to redeem discounted secondary capital must be submitted in writing on an annual basis and must demonstrate to the satisfaction of the appropriate Regional Director that:

(i) The offering credit union is classified ''well capitalized'' under part 702 of this chapter, provided however, that a Regional Director may, on a case-by-case basis, permit an ''adequately capitalized'' credit union that meets the other criteria in this paragraph to redeem discounted secondary capital;

(ii) The discounted secondary capital has been on deposit at least two years;

(iii) The discounted secondary capital will not be needed to cover losses prior to final maturity of the account;

(iv) The offering credit union's books and records are current and reconciled;

(v) The proposed redemption will not jeopardize other current sources of funding, if any, to the offering credit union; and

(vi) The request to redeem is authorized by resolution of the offering credit union's board of directors.

(2) *Decision on request.* If a LICU is not notified within 45 days of receipt of a request for approval to redeem secondary capital that its request is either granted or denied, the LICU may proceed to redeem secondary capital accounts as proposed.

(3) *Schedule for redeeming secondary capital.*

Remaining maturity	Redemption limit (percent)
Four to less than five years ..	20
Three to less than four years	40
Two to less than three years	60
One to less than two years ..	80

Appendix to § 701.34

A credit union that is authorized to offer uninsured secondary capital accounts and each investor in such an account shall execute and date the following ''Disclosure and Acknowledgment'' form, a signed original of which shall be retained by the credit union:

Disclosure and Acknowledgment

(Name of CU) and (Name of investor) hereby acknowledge and agree that (Name of investor) has committed (amount of funds) to a secondary capital account with (name of credit union) under the following terms and conditions:

1. The funds committed to the secondary capital account are committed for a period of __ years.

2. Subject to the conditions set forth in 12 CFR 701.34, the funds committed to the secondary capital account are redeemable only at the option of the offering credit union and only with the prior approval of the appropriate regional director.

3. The secondary capital account is not a share account and the funds committed to the secondary capital account are not insured by the National Credit Union Share Insurance Fund or any other governmental or private entity.

4. The funds committed to the secondary capital account and any interest paid into the account may be used by (name of credit union) to cover any and all operating losses that exceed the credit union's net worth exclusive of allowance accounts for loan losses, and in the event the funds are so used (name of credit union) will under no circumstances restore or replenish those funds to (name of institutional investor).

5. By initialing below, (name of credit union) and (name of institutional investor) agree that accrued interest will be:

__ Paid into and become part of the secondary capital account;

__ Paid directly to the investor;

__ Paid into a separate account from which the investor may make withdrawals; or

__ Any combination of the above provided the details are specified and agreed to in writing.

6. In the event of liquidation of (name of credit union), the funds committed to the secondary capital account shall be *subordinate to all other claims* on the assets of the credit union, including claims of member shareholders, creditors and the National Credit Union Share Insurance Fund.

7. Under certain net worth classifications (*see* 12 CFR 702.204(b)(11), 702.304(b) and 702.305(b), as the case may be), the NCUA Board may prohibit (name of credit union) from paying principal, dividends or interest on its uninsured secondary capital accounts established after August 7, 2000, except that unpaid dividends or interest shall continue to accrue under the terms of the account to the extent permitted by law.

ACKNOWLEDGED AND AGREED TO by this ___ day of (month and year) by:

_____

(name of investor's official)
(title of official)
(name of investor)
(address and phone number of investor)
(investor's tax identification number)

PART 741—REQUIREMENTS FOR INSURANCE

1. The authority citation for part 741 continues to read as follows:

Authority: 12 U.S.C. 1757, 1766, 1781–1790, and 1790d. Section 741.4 is also authorized by 31 U.S.C. 3717.

2. Amend § 741.204 as follows:

a. Remove from paragraph (c) the citation ''§ 701.34'' and add in its place the citation ''§ 701.34(b)(1)'';

b. Add at the end of paragraph (c) after ''Regional Director'' the words: ''for approval. The state supervisory authority shall approve or disapprove the plan with the concurrence of the appropriate NCUA Regional Director.''

c. Add new paragraph (d) to read as follows:

§ 741.204 Maximum public unit and nonmember accounts, and low income designation.

* * * * *

(d) Redeem secondary capital accounts only in accordance with the terms and conditions authorized for Federal credit unions pursuant to § 701.34(d) of this chapter and to the extent not inconsistent with applicable state law and regulation. State chartered federally insured credit unions seeking to redeem secondary capital accounts must submit the request required by § 701.34(d)(1) to both the state supervisory authority and the NCUA Regional Director. The state supervisory authority shall grant or deny the request with the concurrence of the appropriate NCUA Regional Director.

[FR Doc. 05–14806 Filed 7–28–05; 8:45 am]

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NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 741

Requirements for Insurance

AGENCY: National Credit Union Administration (NCUA).

ACTION: Notice of proposed rulemaking and request for comments.

SUMMARY: NCUA is proposing to amend its rule on the purchase of assets and assumption of liabilities by federally-insured credit unions to clarify which transfers of assets or accounts require approval by the NCUA Board. NCUA is also seeking comments on the provision governing nonconforming investments by federally-insured, state-chartered credit unions (FISCUs).

DATES: Comments must be received on or before September 27, 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/news/proposed_regs/proposed_regs.html.* Follow the instructions for submitting comments.
- E-mail: Address to *regcomments@ncua.gov.* Include ''[Your name] Comments on Proposed Rule Part 741.8'' 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.

FOR FURTHER INFORMATION CONTACT: Moisette Green, Staff Attorney, Office of General Counsel, at the above address or telephone: (703) 518–6540.

SUPPLEMENTARY INFORMATION:

A. Background

The purpose of this amendment is to clarify the scope of § 741.8. This regulation identifies certain transactions that require NCUA approval and some exceptions. The confusion in the current regulation results from the fact that the Federal Credit Union Act (Act) requires NCUA approval for transactions that are not addressed specifically in the regulation. The Act requires prior approval for an insured credit union to ''acquire the assets of, or assume liability to pay any member accounts in, any other insured credit union.'' 12 U.S.C. 1785(b)(3). The regulation, however, currently only specifically requires approval for ''for acquiring *loans* or assuming or receiving an assignment of deposits, shares or liabilities'' from credit unions or other institutions that are not insured by the National Credit Union Share Insurance Fund (NCUSIF). 12 CFR 741.8(a) (emphasis added).

This amendment will clarify that transactions involving the sale or purchase of loans or other assets between federally insured credit unions (FICUs) do not require NCUA approval. NCUA notes that other regulations may limit or otherwise regulate those transactions, for example, the member business lending rule, the fixed asset rule, the eligible obligations rule, and so forth. 12 CFR Part 723, §§ 701.36, 701.23.

For those transactions that do require approval, the amendment adds a new subsection describing what a credit union seeking approval should submit and stating that a request for approval should be sent to the appropriate NCUA regional office.

The Act, in subsections 1785(b)(1) and (3), requires FICUs to obtain NCUA approval for various transactions. 12 U.S.C. 1785(b)(1), (3). Subsection (b)(1) concerns transactions with credit unions and other institutions not insured by NCUSIF. Subsection (b)(3) concerns transactions between insured credit unions. In addition to § 741.8, these sections in the Act provide the authority for Part 708a, which addresses conversions to mutual savings banks, and Part 708b, which addresses mergers generally and also conversions to private insurance. Section 741.8 also implements these sections to the extent that it identifies certain transactions that require NCUA approval.

The regulatory history of § 741.8 indicates the Board did not intend to require approval for certain transactions. In 1990, when § 741.8 was first proposed and adopted, NCUA was particularly concerned about FICUs acquiring loans or assuming responsibility for member or customer accounts from privately insured credit unions or any financial institution that was not insured by the NCUSIF. NCUA was concerned because this was a period marked by the failure of many privately insured credit unions as well as the failure of other financial institutions.

Recently, a FISCU asked whether NCUA approval was required for a transfer of one of its branch offices and associated member accounts to another FISCU. NCUA regulations are silent regarding the need for NCUA approval for the transaction. The proposed amendment clarifies NCUA's position.

Currently, § 741.8 is silent on transfers between two FICUs. It requires any FICU to receive Board approval before ''either purchasing or acquiring loans or assuming or receiving an assignment of deposits, shares, or liabilities'' from any credit union that is not federally insured or from any non-credit union financial institution. 12 CFR 741.8(a). The rule only excludes the purchase of particular student loans and real estate secured loans and the assumption of assets associated with member retirement accounts or in which the FICU has a security interest from the approval requirement.

The regulatory history of § 741.8 addresses the apparent gap under the current rule. In 1990, when first proposed, the current rule would have covered transfers of assets, including fixed assets like a brick and mortar branch office, in addition to transfers of loans and share liabilities and between FICUs. 55 FR 49059 (November 26, 1990). The final version of the rule, however, eliminated the requirement for Board approval of transfers between FICUs. The NCUA Board determined transfers between FICUs did not materially increase risk to the NCUSIF. 56 FR 35808 (July 29, 1991). Additionally, the Board believed transfers between FICUs should not unduly affect the safety and soundness of FICUs because of regulations applicable to these credit unions, the examination of FICUs for compliance with these regulations, and enforcement of the regulations by appropriate regulators. *Id.* Accordingly, NCUA did not require the approval of these individual transactions.

B. Discussion

NCUA is aware of four transactions involving an FICU acquiring the assets of another non-liquidating FICU in the past two years. While the regulatory history acknowledges asset transfers between FICUs are permissible, the proposed regulation clarifies this authority by specifically excluding the transfer of assets between FICUs from the requirement to receive approval from the NCUA Board.

The proposed rule continues to except from coverage loan purchases involving the packaging of student loans and real estate secured loans by a federal credit union (FCU) under to § 701.23(b) of the NCUA regulations for sale on the secondary market. These transactions are subject to industry standards ensuring safety and soundness. Additionally, the window of opportunity to consummate these

transactions is often limited, and agency review could disadvantage FCUs' ability to compete in doing these transactions.

FCUs have the authority to purchase ''eligible obligations,'' including member loans from any source, loans of a liquidating credit union, ''student loans, from any source'' and ''real estate-secured loans, from any source'' if the student and real estate loans are to be packaged for sale on the secondary market. 12 CFR 701.23(b)(1)(i-iv). If a purchase of loans from a failed thrift, bank, or credit union meets the criteria of an ''eligible obligation'' and other criteria in § 701.23 an FCU is permitted to purchase the asset. For this reason, the proposed rule does not include specific language regarding an FICU's purchase of loans from another FICU.

C. Request for Comments on § 741.3

NCUA requests comment on revisions to the rules involving special reserves for nonconforming and credit union service organization (CUSO) investments by FISCUs. Comments from interested parties on these issues will assist NCUA in its regulatory review process.

NCUA is considering removing the requirement for FISCUs to establish special reserves under § 741.3(a)(2) for nonconforming investments and, in place of the requirement, requiring FISCU's nonconforming investments to be investment grade. The reason NCUA is considering this change is that some state-chartered credit unions may make investments beyond those authorized in the Act or NCUA regulations for FCUs, and these investments raise safety and soundness concerns. FISCUs are currently required to establish special reserves for these investments if their market value is less than book value. This rule differs from Generally Accepted Accounting Principles (GAAP). To reduce the risk to the NCUSIF and conform to GAAP, the NCUA believes FISCU investments should be limited to ''investment grade'' securities. By an ''investment grade'' security, NCUA means a security that at the time of purchase is rated in one of four highest rating categories by at least one nationally recognized statistical rating organization, which is similar to the definition for ''investment grade'' established by the National Association of Securities Dealers. 69 FR 40429 (July 2, 2004). The NCUA solicits comments on whether the current rule should be changed, whether FISCU investments should be limited to investment grade, or whether there is some other measure commenters believe would be more appropriate.

Finally, NCUA is considering extending some of the limits in the CUSO rule to FISCUs. State-chartered credit unions are not subject to the limitations and requirements of Part 712. FCUs can invest in and lend to a CUSO only if it is structured as a corporation, limited liability company, or limited partnership and primarily serves credit unions or their membership. 12 CFR 712.3. In addition to structure requirements and investments and loan limits, NCUA requires corporate separateness between an FCU and a CUSO. 12 CFR 712.4. NCUA is concerned about the potential liability for state-chartered credit unions, and the resulting potential liability for the NCUSIF, if their CUSOs do not observe corporate separateness. Therefore, NCUA solicits comments on whether its regulations should require FISCUs investing in CUSOs to comply with the limits on the structure, accounting, audits, NCUA access, and corporate separateness addressed in §§ 712.3 and 712.4 to protect the NCUSIF.

Regulatory Procedures

A. 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, or those with under ten million dollars in assets. The proposed rule is grounded in NCUA concerns about the safety and soundness of the transactions and their potential effects on FICUs and the NCUSIF. NCUA has knowledge of only four transactions that would be covered by the proposed rule in two years. Accordingly, the Board determines and certifies that this proposed rule does not have a significant economic impact on a substantial number of small credit unions and that a Regulatory Flexibility Analysis is not required.

B. Paperwork Reduction Act

This proposed regulation contains an application requirement. An FICU must apply for NCUA's written approval to purchase assets or assume liabilities from privately-insured credit unions, other financial institutions, or their successors in interest. NCUA has not mandated any specific requirements for this application, but anticipates it will consist of a letter requesting approval and briefly describing the nature of the transaction and any transaction documents created in the regular course of business as evidence of an agreement, contract or offer of a proposed purchase or assumption.

NCUA requests public comment on all aspects of the collection of information in this proposed rule. NCUA believes that little time will be necessary for the development of the application because FICUs may use their existing business records to support the approval request. NCUA estimates a nominal burden of one hour per FICU and will revisit this estimate in light of the comments NCUA receives.

NCUA will submit the collection of information requirements contained in the regulation to the OMB in accordance with the Paperwork Reduction Act of 1995. 44 U.S.C. 3507. NCUA will use any comments received to develop its new burden estimates. Comments on the collections of information should be sent to Office of Management and Budget, Reports Management Branch, New Executive Office Building, Room 10202, Washington, D.C. 20503; Attention: Mark Menchik, Desk Officer for NCUA. Please send NCUA a copy of any comments you submit to OMB.

The likely respondents are FICUs.

Estimated number of respondents: 5.

Estimated average annual burden hours per respondent: 1 hour.

Estimated total annual disclosure and recordkeeping burden: 5.

NCUA invites comment on:

(1) The accuracy of NCUA's estimate of the burden of the information collections;

(2) Ways to minimize the burden of the information collections on FICUs, including the use of automated collection techniques or other forms of information technology; and

(3) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Recordkeepers are not required to respond to this collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. NCUA is currently requesting a control number for this information collection from OMB.

C. 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 may have an occasional direct affect on the states, the relationship between the national

government and the states, or on the distribution of power and responsibilities among the various levels of government. The proposed rule may supersede provisions of state law, regulation or approvals. Since the proposed rule might lead to conflicts between the NCUA and state financial institution regulators on occasion, comments are requested on means and methods to eliminate, or at least minimize, potential conflicts in this area. Commenters may wish to provide recommendations on the potential use of delegated authority, cooperative decision-making responsibilities, certification processes of federal standards, adoption of comparable programs by states requesting an exemption for their regulated institutions, or other ways of meeting the intent of the Executive Order.

D. 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).

E. 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 741

Bank deposit insurance, Credit unions, Reporting and recordkeeping requirements.

By the National Credit Union Administration Board on July 21, 2005.

Mary Rupp,

Secretary of the Board.

For the reasons stated above, NCUA proposes to amend 12 CFR part 741 as follows:

PART 741—REQUIREMENTS FOR INSURANCE

1. The authority citation for part 741 is revised to read as follows:

Authority: 12 U.S.C. 1757, 1766(a), 1781–1790, and 1790d; 31 U.S.C. 3717.

2. Revise § 741.8 to read as follows:

§ 741.8 Purchase of assets and assumption of liabilities.

(a) Any credit union insured by the National Credit Union Share Insurance Fund (NCUSIF) must receive approval from the NCUA before purchasing loans or assuming an assignment of deposits, shares, or liabilities from:

(1) Any credit union that is not insured by the NCUSIF;

(2) Any other financial-type institution (including depository institutions, mortgage banks, consumer finance companies, insurance companies, loan brokers, and other loan sellers or liability traders); or

(3) Any successor in interest to any institution identified in paragraph (a)(1) or (a)(2) of this section.

(b) Approval is not required for:

(1) Purchases of student loans or real estate secured loans to facilitate the packaging of a pool of loans to be sold or pledged on the secondary market under § 701.23(b)(1)(iii) or (iv) of this chapter or comparable state law for state-chartered credit unions, or purchases of member loans under § 701.23(b)(1)(i) of this chapter or comparable state law for state-chartered credit unions;

(2) Assumption of deposits, shares or liabilities as rollovers or transfers of member retirement accounts or in which a federally-insured credit union perfects a security interest in connection with an extension of credit to any member; or

(3) Purchases of assets, including loans, or assumptions of deposits, shares, or liabilities by any credit union insured by the NCUSIF from another credit union insured by the NCUSIF, except a purchase or assumption as a part of a merger under part 708b of this chapter.

(c) A credit union seeking approval under paragraph (a) of this section must submit a letter to the regional office with jurisdiction for the state where the credit union operates. The letter must request approval and state the nature of the transaction and include copies of relevant transaction documents. The regional director will make a decision to approve or disapprove the request as soon as possible depending on the complexity of the proposed transaction. Credit unions should submit a request for approval in sufficient time to close the transaction.

[FR Doc. 05–14807 Filed 7–28–05; 8:45 am]

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NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 742

Regulatory Flexibility Program

AGENCY: National Credit Union Administration (NCUA).

ACTION: Proposed rule.

SUMMARY: The National Credit Union Administration (NCUA) seeks public comment on a proposal to modify the minimum net worth and CAMEL criteria for eligibility for NCUA's Regulatory Flexibility Program. Federally-insured credit unions that qualify for the Program are exempt in whole or in part from a series of regulatory restrictions and also are allowed to purchase and hold an expanded range of eligible obligations.

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

ADDRESSES: You may submit comments by any one 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 Proposed Rule 742, RegFlex Program'' 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.

FOR FURTHER INFORMATION CONTACT: Steven W. Widerman, Trial Attorney, Office of General Counsel, at 703/518–6557; or Lynn K. Markgraf, Program Officer, Office of Examination and Insurance, at 703/518–6396.

SUPPLEMENTARY INFORMATION:

A. Background of Existing Part 742

Effective in 2002, the NCUA Board established a Regulatory Flexibility Program (''RegFlex'') that exempts qualifying credit unions in whole or in part from a series of regulatory restrictions, and grants them additional powers. 12 CFR part 742; 66 FR 58656 (Nov. 23, 2001). Under existing part 742, a credit union may qualify for RegFlex automatically or by application to the appropriate Regional Director.

RegFlex Designation. To qualify automatically under the existing RegFlex Program, a credit union must meet two criteria. First, it must have a composite CAMEL rating of ''1'' or ''2'' for two consecutive examination cycles. Second, it also must achieve a net worth

ratio of 9 percent (200 basis points above the net worth ratio to be classified ''well capitalized'') for a single Call Reporting period, unless it is subject to a risk-based net worth (''RBNW'') requirement. 12 CFR 742.1. In that case, the credit union's net worth must surpass its RBNW requirement by 200 basis points. As of December 31, 2004, 3457 credit unions automatically qualified for RegFlex.

Under existing part 742, a credit union that is unable to qualify for RegFlex automatically may be eligible to apply to the appropriate Regional Director for a RegFlex designation. To be eligible to apply, a credit union must have either a CAMEL rating of ''3'' or better or meet the 9 percent net worth criterion, but not both. 12 CFR 742.2. A credit union that neither has a CAMEL of ''3'' or better nor meets the net worth criterion is ineligible for RegFlex. A credit union that is eligible may be granted RegFlex relief in whole or in part, at the Regional Director's discretion. In 2004, four out of four applications for a RegFlex designation were granted.

Once attained under current part 742, RegFlex authority can be lost or revoked. A credit union that qualified for RegFlex automatically is disqualified once it fails, as the result of an examination (but not a supervision contact), to meet either the CAMEL or net worth criteria in § 742.2(a). 12 CFR 742.6. RegFlex authority can be revoked by action of the Regional Director for ''substantive and documented safety and soundness reasons.'' § 742.2(b). The decision to revoke may be appealed to NCUA's Supervisory Review Committee,[1] and thereafter to the NCUA Board. 12 CFR 742.7. In 2004, only one credit union's RegFlex authority was revoked, with no appeal.

RegFlex authority ceases when that authority is lost or revoked (even if an appeal of a revocation is pending). 12 CFR 742.6, 742.7. But past actions taken under that authority are ''grandfathered,'' *i.e.*, they will not be disturbed or undone.

RegFlex Relief. As originally adopted, the RegFlex program gave qualifying credit unions relief from a variety of regulatory restrictions, 12 CFR 742.4(a) and 742.5:

- The maximum limit on fixed assets (5 percent of shares and retained earnings), 12 CFR 701.36(c)(1).
- The maximum limit on non-member deposits (20 percent of total shares or $1.5 million, whichever is greater), 12 CFR 701.32(b).
- Conditions on making charitable contributions (relating to the charity's location, activities and purpose, and whether the contribution is in the credit union's best interest and is reasonable relative to its size and condition), 12 CFR 701.25.
- The maximum limit on investments over which discretionary control can be delegated (100 percent of credit union's net worth), 12 CFR 703.5(b)(1)(ii) and (2).
- The maximum limit on the maturity length of zero-coupon securities (10 years), 12 CFR 703.16(b).
- The mandate to ''stress test'' securities holdings to assess the impact of a 300-basis points shift in interest rates, 12 CFR 703.12(c) (2001).
- Restrictions on the purchase of eligible obligations, 12 CFR 701.23(b), thus expanding the range of loans RegFlex credit unions could purchase and hold as long as they are loans those credit unions would be authorized to make (auto, credit card, member business, student and mortgage loans, as well as loans of a liquidating credit union up to 5 percent of the purchasing credit union's unimpaired capital and surplus).

With the overhaul of parts 703 and 723 in 2003,[2] RegFlex credit unions received further relief from the following restrictions on member business lending and investments:

- The mandate that principals personally guarantee and assume liability for member business loans. 12 CFR 723.7(b).
- The maturity limit on investments purchased with the proceeds of a borrowing repurchase transaction. 12 CFR 703.13(d)(3).
- The prohibition on purchasing a commercial mortgage related security that is not permitted by the Federal Credit Union Act, 12 U.S.C. 1757(7)(E). 12 CFR 703.16(d).

B. Proposal To Modify Reg Flex Qualifying Criteria

The NCUA Board is reassessing the RegFlex program to ensure that it is available to credit unions that are least likely to encounter safety and soundness problems, thus minimizing the risk of loss to the Share Insurance Fund. Experience indicates that such credit unions consistently maintain a high net worth ratio and a high CAMEL rating. Accordingly, the proposed rule modifies the RegFlex eligibility criteria to fully reflect sustained superior performance as measured by net worth and CAMEL rating.

Net worth level. To qualify for RegFlex automatically or by application, existing part 742 requires a credit union to achieve a net worth of 9 percent—200 basis points in excess of the 7 percent net currently needed to be classified ''well capitalized.''[3] The proposed rule brings the net worth criterion for RegFlex into alignment with the ''well capitalized'' net worth category under NCUA's system of prompt corrective action (''PCA''). 12 U.S.C. 1790d(c)(1)(A). Congress determined that it is unnecessary for credit unions in that category—the highest of the five net worth categories—to undertake any PCA whatsoever. The NCUA Board believes there is no reason to set a higher net worth standard to qualify for RegFlex than Congress has set for credit unions to be free of PCA. Accordingly, the proposed rule reduces the qualifying minimum net worth classification to ''well capitalized,'' requiring a minimum net worth of 7 percent under existing part 702.[4] Credit unions that are subject to an RBNW requirement would qualify for RegFlex if they remained ''well capitalized'' after applying any RBNW requirement applicable under part 702.

Net worth duration. To qualify for RegFlex, existing part 742 requires a credit union to achieve the minimum net worth for just a single quarter. This momentary ''snapshot'' of net worth is too fleeting to be evidence of sustained superior performance; only successive ''snapshots'' of net worth would suffice to demonstrate such performance. To that end, the proposed rule requires a credit union to meet a dual standard: to be ''well capitalized'' and to maintain that level for six consecutive quarters. The six-quarter period coincides with the eighteen-month examination schedule that applies to most RegFlex qualifying credit unions. A credit union that is unable to maintain the minimum net worth for six consecutive quarters still would be eligible to apply to the appropriate Regional Director for a RegFlex designation provided the credit union is rated a CAMEL ''2'' or better.

The proposed rule strikes a balance—decreasing the minimum net worth while compensating for the relative increase in risk exposure by extending

[1] *See* Interpretive Ruling and Policy Statement 95–1, 60 FR 14795 (March 20, 1995).

[2] *See* 68 FR 32960, 32966 (June 3, 2003) *and* 68 FR 56537, 56542, 56553 (Oct. 1, 2003).

[3] December 2004 Call Report data indicates that 73 percent of all RegFlex credit unions have a net worth in excess of 11 percent—fully 200 basis points above the qualifying minimum net worth. In contrast, only 8.9 percent of RegFlex credit unions have a net worth of 9.5 percent or less—within fifty basis points of the qualifying minimum net worth.

[4] Should the minimum net worth to be classified ''well capitalized'' under PCA be adjusted by law, or as permitted by law, 12 U.S.C. 1790d(c)(2), the minimum net worth to qualify for RegFlex would change accordingly.

the number of quarters that the minimum net worth must be maintained to qualify for RegFlex. For example, there is no limit on the amount of fixed assets a RegFlex credit union can acquire. 12 CFR 742.4(a). Thus, a RegFlex credit union is entitled to build or purchase a new building that increases its aggregate fixed assets to an inordinate proportion of total assets. If the credit union no longer qualifies for RegFlex in the next quarter due to a decline in net worth, the ''grandfather'' provision in both the existing and the proposed rule would leave intact all actions formerly taken under RegFlex authority. 12 CFR 742.8. That provision would entitle the ex-RegFlex credit union to keep the building, provided that it absorbs the expenses of maintenance, debt service and depreciation, etc., potentially having a negative affect on its profitability and net worth.

Under the existing rule, the ex-RegFlex credit union would have a net worth cushion of at least 300 basis points against possible losses due to expenses of maintaining its fixed assets.[5] But under the proposed rule, the net worth cushion against such losses dwindles to zero. Credit unions that demonstrate sustained superior performance as evidenced by a qualifying net worth ratio lasting over a series of quarters, instead of just one, are better able to prepare for and manage the risks to profitability and net worth. The NCUA Board invites public comment on what is the appropriate number of quarters the minimum net worth should be required to last before a credit union qualifies for RegFlex.

Notification. Existing part 742 requires NCUA to notify a credit union on three occasions: when it first qualifies automatically for RegFlex; during an examination to confirm whether it still qualifies or has become ineligible; and after it applies to the appropriate Regional Director for a RegFlex designation. These notification requirements are redundant in the case of credit unions that qualify automatically for RegFlex. Part 742's net worth and CAMEL criteria are discrete and as apparent to credit unions themselves as to NCUA, making it unnecessary for NCUA to notify each credit union that it has qualified for RegFlex, and then to notify it again during successive examinations that it still qualifies. Accordingly, the proposed rule eliminates the requirement that NCUA notify credit unions that qualify automatically for RegFlex. But left intact is the requirement for a Regional Director to notify a credit union that has applied for RegFlex designation whether or not it has been granted.

Other modifications. The substantive modifications to part 742 are limited to reducing the level and extending the duration of the minimum qualifying net worth, and eliminating the notification requirement for credit unions that qualify automatically for RegFlex. No substantive revisions at all are proposed for the RegFlex relief (fully described in section A. above) that existing part 742 provides qualifying credit unions. 12 CFR 742.4. However, the NCUA Board invites public comment on whether RegFlex credit unions should be exempt from any additional regulations.

To make part 742 more user-friendly, the proposed rule makes several fundamental changes to the existing format. First, the proposed rule abandons the question-and-answer format in favor of organizing the rule by stated subjects. Second, in several provisions of the rule, items listed within narrative text have been broken out into numbered and subtitled lists that make individual items more accessible. *E.g.*, 12 CFR 742.2. Finally, in the section on RegFlex relief, instead of incorporating the affected regulations simply by reference to other sections of chapter VII, the proposed rule lists and describes the regulatory requirements and restrictions that RegFlex credit unions are exempt from, as well as the obligations they are authorized to purchase and hold. 12 CFR 742.4.

Impact on Credit Unions. Were the NCUA Board to adopt the proposed substantive modifications, December 2004 Call Report data shows that 3,919 credit unions would qualify for RegFlex automatically—a 13.36 percent increase over the number of credit unions that qualify under existing part 742. Further, the proposed modifications would make an additional 462 credit unions that do not automatically qualify eligible to apply for a RegFlex designation.

Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis describing any significant economic impact a proposed regulation may have on a substantial number of small credit unions (those having under $10 million in assets). The proposed rule reduces the level and increases the duration of the minimum net worth required to qualify for RegFlex, without imposing any additional regulatory burden. If adopted, the proposed rule will not have a significant economic impact on a substantial number of small credit unions. Thus, 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 regulatory actions on State and local interests. NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily adheres to the fundamental federalism principles addressed by the executive order. This proposed rule would not have would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, this proposed rule does not constitute a policy that has federalism implications for purposes of the Executive Order.

Treasury and General Government Appropriations Act, 1999

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

Agency Regulatory Goal

NCUA's goal is to promulgate clear, understandable regulations that impose a minimal regulatory burden. The proposed rule seeks to improve and simplify the existing RegFlex Program. We request your comments on whether the proposed rule would be understandable and minimally intrusive if implemented as proposed.

List of Subjects in 12 CFR Part 742

Credit unions, Reporting and recordkeeping requirements.

By the National Credit Union Administration Board on July 21, 2005.

Mary F. Rupp,

Secretary of the Board.

For the reasons set forth above, 12 CFR part 742 is proposed to be revised to read as follows:

[5] A net worth ratio of 6.99 percent or lower triggers the PCA requirement to make quarterly transfers of earnings to net worth. 12 U.S.C. 1790d(e); 12 CFR 702.201(a). A net worth ratio of 5.99 percent or below triggers all four PCA mandatory supervisory actions. 12 U.S.C. 1790d(f)–(g); 12 CFR 702.202(a).

PART 742—REGULATORY FLEXIBILITY PROGRAM

Authority: 12 U.S.C. 1756, 1766.

§ 742.1 Regulatory Flexibility Program.

NCUA's Regulatory Flexibility Program (RegFlex) exempts from all or part of the NCUA regulatory restrictions identified elsewhere in this part credit unions that demonstrate sustained superior performance as measured by CAMEL rating and net worth classification. RegFlex credit unions also are authorized to purchase and hold an expanded range of obligations.

§ 742.2 Criteria to qualify for RegFlex designation.

(a) *Automatic qualification.* A credit union automatically qualifies for RegFlex designation, without formal notification, when it has:

(1) *CAMEL.* Received a composite CAMEL rating of ''1'' or ''2'' for the two (2) preceding examinations; and

(2) *Net worth.* Maintained a net worth classification of ''well capitalized'' under part 702 of this chapter for all six (6) preceding consecutive quarters or, if subject to a risk-based net worth (RBNW) requirement under part 702 of this chapter, has remained ''well capitalized'' for all six (6) preceding consecutive quarters after applying the applicable RBNW requirement.

(b) *Application for designation.* A credit union that does not automatically qualify under paragraph (a) of this section may apply for a RegFlex designation, which may be granted in whole or in part upon notification by the appropriate Regional Director, if the credit union has either:

(1) *CAMEL.* Received a composite CAMEL rating of ''3'' or better for the preceding examination; or

(2) *Net worth.* Maintained a net worth classification of ''well capitalized'' under part 702 of this chapter for less than all six (6) preceding consecutive quarters or, if subject to an RBNW requirement under part 702 of this chapter, has remained ''well capitalized'' for less than all six (6) preceding consecutive quarters after applying the applicable RBNW requirement.

§ 742.3 Loss and revocation of RegFlex designation.

(a) *Loss of authority.* RegFlex authority is lost when a credit union that qualified automatically under the CAMEL and net worth criteria in § 742.2(a) no longer meets either of those criteria. Once the authority is lost, the credit union may no longer claim the exemptions and authority set forth in § 742.4.

(b) *Revocation of authority.* The Regional Director may revoke a credit union's RegFlex authority under § 742.2, in whole or in part, for substantive and documented safety and soundness reasons. When revoking RegFlex authority, the regional director must give written notice to the credit union stating the reasons for the revocation. The revocation is effective upon the credit union's receipt of notice from the regional director.

(c) *Appeal of revocation.* A credit union has 60 days from the date of the regional director's determination to revoke RegFlex authority to appeal the action, in whole or in part, to NCUA's Supervisory Review Committee. The Regional Director's determination will remain in effect unless and until the Supervisory Review Committee issues a different determination. If the credit union is dissatisfied with the decision of the Supervisory Review Committee, the credit union has 60 days from the date of the Committee's decision to appeal to the NCUA Board.

(d) *Grandfathering of past actions.* Any action duly taken in reliance upon RegFlex authority will not be affected or undone by subsequent loss or revocation of that authority. Any actions exercised after RegFlex authority is lost or revoked must comply with all applicable regulatory requirements and restrictions. Nothing in this part shall affect NCUA's authority to require a credit union to divest its investments or assets for substantive safety and soundness reasons.

§ 742.4 RegFlex relief.

(a) *Exemptions.* RegFlex credit unions are exempt from the following regulatory restrictions:

(1) *Charitable contributions.* § 701.25 of this chapter concerning charitable contributions;

(2) *Nonmember deposits.* § 701.32(b) and (c) of this chapter concerning the maximum amount of non-member deposits a credit union can accept; and

(3) *Fixed assets.* § 701.36(a), (b) and (c) of this chapter concerning the maximum amount of fixed assets a credit union can acquire;

(4) *Member business loans.* § 723.7(b) of this chapter concerning the personal liability and guarantee of principals for member business loans.

(5) *Discretionary control of investments.* § 703.5(b)(1)(ii) and (2) of this chapter concerning the maximum amount of investments over which discretionary control can be delegated;

(6) *''Stress testing'' of investments.* § 703.12(c) of this chapter concerning ''stress testing'' of securities holdings to assess the impact of an extreme interest rate shift;

(7) *Zero-coupon securities.* § 703.16(b) of this chapter concerning the maximum maturity length of zero-coupon securities;

(8) *Borrowing repurchase transactions.* § 703.13(d)(3) of this chapter, concerning the maturity of investments a credit union purchases with the proceeds received in a borrowing repurchase transaction, provided the value of the investments that mature later than the borrowing repurchase transaction does not exceed 100 percent of the federal credit union's net worth;

(9) *Commercial mortgage related security.* § 703.16(d) of this chapter prohibiting the purchase of a commercial mortgage related security that is not otherwise permitted by 12 U.S.C. 1757(7)(E), provided:

(i) The security is rated in one of the two highest rating categories by at least one nationally-recognized statistical rating organization;

(ii) The security meets the definition of mortgage related security as defined in 15 U.S.C. 78c(a)(41) and the definition of commercial mortgage related security as defined in § 703.2 of this chapter;

(iii) The security's underlying pool of loans contains more than 50 loans with no one loan representing more than 10 percent of the pool; and

(iv) The aggregate total of commercial mortgage related securities purchased by the Federal credit union does not exceed 50 percent of its net worth.

(b) *Purchase of obligations from a FICU.* A RegFlex credit union is authorized to purchase and hold the following obligations, provided that it would be empowered to grant them:

(1) *Eligible obligations.* Eligible obligations pursuant to § 701.23(b)(1)(i) of this chapter without regard to whether they are obligations of its members, provided they are purchased from a federally-insured credit union only;

(2) *Student loans.* Student loans pursuant to § 701.23(b)(1)(iii) of this chapter, provided they are purchased from a federally-insured credit union only;

(3) *Mortgage loans.* Real-state secured loans pursuant to 701.23(b)(1)(iv) of this chapter, provided they are purchased from a federally-insured credit union only;

(4) *Eligible obligations of a liquidating credit union.* Eligible obligations of a liquidating credit union pursuant to § 701.23(b)(1)(ii) of this chapter without regard to whether they are obligations of the liquidating credit union's members,

provided that such purchases do not exceed 5 percent (5%) of the unimpaired capital and surplus of the purchasing credit union.

[FR Doc. 05–14805 Filed 7–28–05; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 796

Post-Employment Restrictions for Certain NCUA Examiners

AGENCY: National Credit Union Administration (NCUA).

ACTION: Proposed rule.

SUMMARY: NCUA proposes to add a new part to NCUA's regulations to implement new, post-employment restrictions that will apply to certain senior NCUA examiners starting December 17, 2005. The proposed rule prohibits senior NCUA examiners, for a year after leaving NCUA employment, from accepting employment with a credit union if they had continuing, broad responsibility for examination of that credit union for two or more months during their last 12 months of NCUA employment.

DATES: Comments must be received on or before September 27, 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 Proposed Rule 796, Post-Employment Restrictions,'' in the e-mail subject line.
- Fax: (703) 518–6319. Use the subject line described above for e-mail.
- Mail: Address to Mary F. Rupp, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.
- Hand Delivery/Courier: Same as mail address.

FOR FURTHER INFORMATION CONTACT: Regina M. Metz, Staff Attorney, Office of General Counsel, at the above address or telephone (703) 518–6540.

SUPPLEMENTARY INFORMATION: On December 17, 2004, Congress enacted the Intelligence Reform Act, Public Law 108–458, creating new, post-employment restrictions for certain federal employees who examine banks and credit unions. The law requires NCUA to prescribe its own regulation implementing this section for federal examiners of federally insured credit unions and consult to the extent it deems necessary with the federal banking agencies. NCUA staff has consulted with their interagency group so that our proposed rule is consistent and comparable with the joint notice of proposed rulemaking the federal banking agencies are issuing.

Proposed Changes

The Board is proposing post-employment restrictions for certain NCUA examiners to implement recent amendments to the Federal Credit Union (FCU) Act. Pub. L. 108–458, § 6303(c), 118 Stat. 3754 (2004); 12 U.S.C. 1786(w). The post-employment restrictions will apply to senior examiners starting December 17, 2005. For a year after leaving NCUA employment, senior examiners would be prohibited from accepting employment with a federally insured credit union if they had continuing, broad responsibility for examination of that credit union for two or more months during their last 12 months of NCUA employment.

The proposed rule implements the statutory provisions by giving NCUA the authority to issue administrative orders removing a person from a position with a federally insured credit union and barring further participation with that credit union or any federally insured credit union for up to five years. Also, the proposed rule implements the statute by imposing civil money penalties for violations of up to $250,000.

The proposed rule clarifies the NCUA employees to whom the restriction will apply. 12 U.S.C. 1786(w)(3). Congress intended the one-year post-employment prohibition to apply to examiners with a ''meaningful'' relationship to the credit union.[1] Consistent with that intent, the proposal defines a ''senior examiner'' as an NCUA employee, commissioned as an examiner, who has continuing, broad, and lead responsibility for examining a particular federally insured credit union, routinely interacts with officers or employees of the credit union, and devotes a substantial portion of his or her time to supervising or examining that credit union.

The reference to a ''substantial portion of time'' in the definition of senior examiner is intended to address the situation in which an NCUA employee examines or inspects a group of federally insured credit unions. The Board believes such an examiner would be a senior examiner for purposes of the proposed rule only for those credit unions to which he or she devotes substantial time. The Board believes that an examiner who divides his or her time across a portfolio of federally insured credit unions is less likely to develop a meaningful relationship with any one credit union. The determination of whether an examiner devotes a substantial portion of his or her time is necessarily case by case.

While the one-year post-employment restriction can apply by its terms to all examiners, NCUA expects very few examiners to actually qualify as senior examiners. For example, NCUA expects most examiners in charge will not be subject to the one-year prohibition. Most NCUA examiners in charge examine multiple, federally insured credit unions in a single year and typically do not develop a sustained or meaningful relationship with any one credit union. Therefore, they would not be considered senior examiners under the proposal.

Although NCUA expects very few of its employees will be subject to the restriction, NCUA anticipates these few would involve specialty examiners, such as corporate examiners or problem case officers. These specialty examiners are sometimes assigned to be dedicated to and in residence at a credit union for an extended period of time. Thus, the proposed rule includes an example that an NCUA resident corporate credit union examiner assigned to work at a federally insured, corporate credit union for two or more months during the last 12 months of that individual's employment with NCUA will be subject to the one-year prohibition.

The proposal defines the term consultant to include individuals who work directly on matters for, or on behalf of, a federally insured credit union. NCUA construes this to mean that a covered employee may not join a consulting group and accept an assignment directly for the credit union for which he or she served as senior examiner in two of the last 12 months of his or her NCUA employment. The employee, however, may join the consulting firm as long as he or she does not directly participate in a matter involving the relevant credit union. NCUA requests comment on whether the meaning of consultant is sufficiently

[1] 150 Cong. Rec. S10356 (daily ed. Oct. 4, 2004) (statement of Sen. Levin).

clear and whether there are other terms NCUA should define.

The proposed rule also implements the statutory provision authorizing the NCUA Board to grant waivers if the NCUA Chairman certifies that granting the waiver would not affect the integrity of NCUA's supervisory program. NCUA anticipates waivers would involve highly unusual circumstances. The Board invites comment on any provisions of the proposed rule.

Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires NCUA to prepare an analysis to describe any significant economic impact any proposed regulation may have on a substantial number of small entities. NCUA considers credit unions having less than ten million dollars in assets to be small for purposes of RFA. Interpretive Ruling and Policy Statement (IRPS) 87–2 as amended by IRPS 03–2. The proposal prohibits senior examiners from accepting employment with a credit union if they had continuing, broad responsibility for examination of that credit union for two or more months during their last 12 months of NCUA employment. The NCUA has determined and certifies that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small credit unions. Accordingly, the NCUA has determined that an RFA analysis is not required. NCUA solicits comment on this analysis and welcomes any information that would suggest a different conclusion.

Paperwork Reduction Act

In accordance with the requirements of the Paperwork Reduction Act of 1995 (PRA), NCUA may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The Board has determined that the proposed rule does not contain any information collections and, therefore, no PRA number is required.

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. It will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. NCUA has determined that this proposal 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 will 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. NCUA requests comments on whether the proposed rule is understandable and minimally intrusive if implemented as proposed.

List of Subjects in 12 CFR Part 796

Conflicts of interest, Credit unions, Ethical conduct, Government employees.

By the National Credit Union Administration Board on July 21, 2005.

Mary F. Rupp,

Secretary of the Board.

Accordingly, NCUA proposes to add a new 12 CFR part 796 as follows:

PART 796—POST-EMPLOYMENT RESTRICTIONS FOR CERTAIN NCUA EXAMINERS

Sec.

796.1 What is the purpose and scope of this part?
796.2 Who is considered a senior examiner of the NCUA?
796.3 What special post-employment restrictions apply to senior examiners?
796.4 When do these special restrictions become effective and may they be waived?
796.5 What are the penalties for violating these special post-employment restrictions?
796.6 What other definitions and rules of construction apply for purposes of this part?

Authority: 12 U.S.C. 1786(w).

§ 796.1 What is the purpose and scope of this part?

This part identifies those National Credit Union Administration (NCUA) employees who are subject to the special, post-employment restrictions in section 1786(w) of the Act and implements those restrictions as they apply to NCUA employees.

§ 796.2 Who is considered a senior examiner of the NCUA?

For purposes of this part, an NCUA employee is considered to be the ''senior examiner'' for a federally insured credit union if the employee—

(a) Has been commissioned by NCUA to conduct examinations or inspections of federally insured credit unions on behalf of NCUA;

(b) Has continuing, broad, and lead responsibility for examining or inspecting that federally insured credit union;

(c) Routinely interacts with officers or employees of that federally insured credit union; and

(d) Devotes a substantial portion of his or her time to supervising or examining that federally insured credit union.

§ 796.3 What special post-employment restrictions apply to senior examiners?

(a) *Senior examiners of federally insured credit unions.* An officer or employee of the NCUA who serves as the senior examiner of a federally insured credit union for two or more months during the last 12 months of individual's employment with NCUA may not, within one year after leaving NCUA employment, knowingly accept compensation as an employee, officer, director, or consultant from that credit union.

(b) *Example.* An NCUA resident corporate credit union examiner assigned to work at a federally insured, corporate credit union for two or more months during the last 12 months of that individual's employment with NCUA will be subject to the one-year prohibition of this section.

§ 796.4 When do these special restrictions become effective and may they be waived?

The post-employment restrictions in section 1786(w) of the Act and § 796.3 do not apply to any current or former NCUA employee, if—

(a) The individual ceased to be an NCUA employee on or before December 17, 2005; or

(b) The Chairman of the NCUA Board certifies in writing and on a case-by-case basis that granting the senior examiner a waiver of the restrictions would not affect the integrity of the NCUA's supervisory program.

§ 796.5 What are the penalties for violating these special post-employment restrictions?

(a) *Penalties under section 1786(w)(5) of the Act.* An NCUA senior examiner who violates the post-employment restrictions set forth in § 796.3 can be—

(1) Removed from participating in the affairs of the relevant credit union and

prohibited from participating in the affairs of any federally insured credit union for a period of up to five years; and, alternatively, or in addition,

(2) Assessed a civil monetary penalty of not more than $250,000.

(b) *Other penalties.* The penalties in paragraph (a) of this section are not exclusive, and a senior examiner who violates the restrictions in § 796.3 also may be subject to other administrative, civil, and criminal remedies and penalties as provided in law.

§ 796.6 What other definitions and rules of construction apply for purposes of this part?

For purposes of this part, a person shall be deemed to act as a ''*consultant*'' for a federally insured credit union or other company only if the person works directly on matters for, or on behalf of, such credit union.

[FR Doc. 05–14808 Filed 7–28–05; 8:45 am]

BILLING CODE 7535–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–21975; Directorate Identifier 2005–NM–122–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 727 Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all Boeing Model 727 airplanes. This proposed AD would require revising the Limitations section of the Airplane Flight Manual to prohibit resetting a tripped circuit breaker for a fuel pump. This proposed AD results from fuel system reviews conducted by the manufacturer. We are proposing this AD to prohibit the resetting of a tripped circuit breaker for a fuel pump, which could allow an electrical fault to override the protective features of the circuit breaker, and could result in sparks inside the fuel tank, ignition of fuel vapors, and consequent fire or explosion.

DATES: We must receive comments on this proposed AD by September 12, 2005.

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

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

FOR FURTHER INFORMATION CONTACT: Sulmo Mariano, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6501; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Include the docket number ''FAA–2005–21975; Directorate Identifier 2005–NM–122–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

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

Examining the Docket

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

Discussion

The FAA has examined the underlying safety issues involved in recent fuel tank explosions on several large transport airplanes, including the adequacy of existing regulations, the service history of airplanes subject to those regulations, and existing maintenance practices for fuel tank systems. As a result of those findings, we issued a regulation titled ''Transport Airplane Fuel Tank System Design Review, Flammability Reduction and Maintenance and Inspection Requirements'' (67 FR 23086, May 7, 2001). In addition to new airworthiness standards for transport airplanes and new maintenance requirements, this rule included Special Federal Aviation Regulation No. 88 (''SFAR 88,'' Amendment 21–78, and subsequent Amendments 21–82 and 21–83).

Among other actions, SFAR 88 requires certain type design (*i.e.*, type certificate (TC) and supplemental type certificate (STC)) holders to substantiate that their fuel tank systems can prevent ignition sources in the fuel tanks. This requirement applies to type design holders for large turbine-powered transport airplanes and for subsequent modifications to those airplanes. It requires them to perform design reviews and to develop design changes and maintenance procedures if their designs do not meet the new fuel tank safety standards. As explained in the preamble to the rule, we intended to adopt airworthiness directives to mandate any changes found necessary to address unsafe conditions identified as a result of these reviews.

In evaluating these design reviews, we have established four criteria intended to define the unsafe conditions associated with fuel tank systems that require corrective actions. The percentage of operating time during which fuel tanks are exposed to flammable conditions is one of these criteria. The other three criteria address the failure types under evaluation: Single failures, single failures in combination with another latent condition(s), and in-service failure experience. For all four criteria, the evaluations included consideration of

previous actions taken that may mitigate the need for further action.

Based on this process, we have determined that the actions identified in this AD are necessary to reduce the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

The airplane manufacturer has also determined that, if a tripped circuit breaker for a fuel pump is reset, an ignition source may be created in the fuel tank. The tripping of a circuit breaker indicates an electrical fault. Resetting the circuit breaker may result in the electrical fault overriding the protective features of the circuit breaker, which could result in sparks inside the fuel tank, an ignition source for fuel vapors, and consequent fire or explosion.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other airplanes of this same type design. For this reason, we are proposing this AD, which would prohibit the resetting of a tripped circuit breaker for a fuel pump, which could allow an electrical fault to override the protective features of the circuit breaker, and could result in sparks inside the fuel tank, ignition of fuel vapors, and consequent fire or explosion.

Costs of Compliance

There are about 600 airplanes of the affected design in the worldwide fleet. This proposed AD would affect about 300 airplanes of U.S. registry. The proposed actions would take about 1 work hour per airplane, at an average labor rate of $65 per work hour. Based on these figures, the estimated cost of the proposed AD for U.S. operators is $19,500, or $65 per airplane.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

BOEING: Docket No. FAA–2005–21975; Directorate Identifier 2005–NM–122–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by September 12, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all Boeing Model 727, 727C, 727–100, 727–100C, 727–200, and 727–200F series airplanes; certificated in any category.

Unsafe Condition

(d) This AD results from fuel system reviews conducted by the manufacturer. We are issuing this AD to prohibit the resetting of a tripped circuit breaker for a fuel pump, which could allow an electrical fault to override the protective features of the circuit breaker, and could result in sparks inside the fuel tank, ignition of fuel vapors, and consequent fire or explosion.

Compliance

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

Revise the Airplane Flight Manual (AFM)

(f) Within 30 days after the effective date of this AD, revise the Limitations section of the Boeing 727 AFM to include the following statement. This may be done by inserting a copy of this AD into the AFM.

''Do not reset a tripped fuel pump circuit breaker.''

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

Alternative Methods of Compliance (AMOCs)

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

Issued in Renton, Washington, on July 21, 2005.

Kevin M. Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–15016 Filed 7–28–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–15471; Airspace Docket No. 03–AWA–6]

RIN 2120–AA66

Proposed Modification of the Minneapolis Class B Airspace Area; Minneapolis

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental notice of proposed rulemaking (SNPRM).

SUMMARY: This SNPRM supplements a notice of proposed rulemaking (NPRM) published in the **Federal Register** on November 24, 2003. In this supplemental notice, the FAA is proposing to modify the previously proposed description of the Minneapolis, MN, Class B airspace area. Specifically, this action proposes to add an additional area that is necessary to contain large turbine-powered aircraft within the Class B airspace area during aircraft operations to the new Runway 17/35 at the Minneapolis-St. Paul International (Wold Chamberlain) Airport (MSP). The proposed modifications would enhance safety and improve the management of increased aircraft operations in the Minneapolis terminal area. Further, this effort supports the FAA's national airspace redesign goal of optimizing terminal and en route airspace areas to reduce aircraft delays and improve system capacity.

DATES: Comments must be received on or before September 12, 2005.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify both docket numbers, FAA–2003–15471 and Airspace Docket No. 03–AWA–6, at the beginning of your comments. You may also submit comments through the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Steve Rohring, Airspace and Rules, Office of System Operations and Safety, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers and be submitted in triplicate to the Docket Management System (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://dms.dot.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Nos. FAA–2003–15471 and Airspace Docket No. 03–AWA–6.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov* or the Federal Register's Web page at *http://www.gpoaccess.gov/fr/index.html.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, IL 60018.

Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's, Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

On November 24, 2003, the FAA published an NPRM in the **Federal Register** to modify the Minneapolis Class B airspace area (68 FR 65859). The FAA proposed this modification to address an increase in aircraft operations and accommodate aircraft operations to the new runway (Runway 17/35) at MSP.

Public Input

In response to the NPRM, the Air Line Pilots Association, International and the National Business Aviation Association, Inc. commented that the ''southeast cut-out'' of the proposed Area E would result in aircraft not being contained in the Class B airspace when operating on the extended final approach course to Runway 35. They suggested reducing the size of the ''southeast cut-out'' by changing the western boundary of the cut-out from the Gopher 170° radial to the Gopher 160° radial.

The FAA's review of this comment confirmed that the suggested change is needed and also revealed that the floor of the Class B airspace in that area should be lowered from 7,000 feet MSL to 6,000 feet MSL to contain instrument operations to the new Runway 35 within the Class B airspace area. This SNPRM proposes a new area F that would provide the additional area required. Comments already received, other than described above, and comments to this SNPRM will be addressed in the final rule.

Ad Hoc Committee

The ad hoc committee, sponsored by the Minnesota Department of Transportation, Office of Aeronautics, and comprised of representatives from AOPA, EAA, Minnesota Soaring Clubs, International Aerobatics, Ultralight Association, Air National Guard, Life Flight, flight instructors, and skydivers, has reviewed and concurred with the changes proposed herein.

The Proposal

The FAA is proposing an amendment to Title 14 Code of the Federal Regulations (14 CFR) part 71 to modify the MSP Class B airspace area. Specifically, this action (depicted on the attached chart) proposes to expand the upper limits of Area A, Area B, Area C, and Area D from 8,000 feet MSL to and including 10,000 feet MSL; expand the lateral limits of Area D to the northwest and southeast of MSP; and add an Area E and an Area F within 30 NM of the Minneapolis-St. Paul International (Wold-Chamberlain) Airport DME Antenna (I–MSP DME) excluding certain areas to the north and southeast of MSP to improve the containment of turbo-jet aircraft operations within the MSP Class B airspace area.

The following are the proposed revisions for the Minneapolis Class B airspace area:

Area A. The FAA proposes to expand the upper limit of Area A from 8,000 feet MSL to 10,000 feet MSL. The reason for this change is to provide additional airspace needed to ensure that aircraft departing and arriving MSP are contained within the MSP Class B airspace area.

Area B. The FAA proposes to expand the upper limit of Area B from 8,000 feet MSL to 10,000 feet MSL. The reason for this change is to provide additional airspace needed to ensure that aircraft departing and arriving MSP are contained within the MSP Class B airspace area.

Area C. The FAA proposes to expand the upper limit of Area C from 8,000 feet MSL to 10,000 feet MSL. The reason for this change is to provide additional airspace needed to ensure that aircraft departing and arriving MSP are contained within the MSP Class B airspace area.

Area D. The FAA proposes to modify Area D by expanding the upper limit of Area D from 8,000 feet MSL to 10,000 feet MSL and by expanding the boundaries of Area D to the northwest and southeast of MSP, incorporating airspace that lies on the extended ILS localizer course and downwind legs for Runways 12L/30R and 30L/12R, between the I–MSP DME 20–NM and 30–NM arcs. The reason for this change is to provide additional airspace needed to ensure that aircraft vectored for the ILS approaches to the above runways remain within the MSP Class B airspace area.

Area E. The FAA is proposing to add an Area E between the I–MSP DME 20–NM and 30–NM arcs, extending from 7,000 feet MSL to and including 10,000 feet MSL, excluding certain areas to the north and southeast of MSP. The reason for this change is to provide additional airspace needed to ensure that aircraft departing and arriving MSP are contained within the MSP Class B airspace area.

Area F. The FAA is proposing to add an Area F between the I–MSP DME 20–NM and 30–NM arcs from the Gopher 160° radial clockwise to the Gopher 170° radial, extending from 6,000 feet MSL to and including 10,000 feet MSL. The reason for this change is to provide additional airspace needed to ensure that aircraft departing and arriving MSP are contained within the MSP Class B airspace area.

These modifications would improve the management of aircraft operations in the MSP terminal area and enhance safety by expanding the dimensions of the Class B airspace area to protect the aircraft conducting instrument approaches to MSP. Additionally, this proposed action supports various efforts to enhance the efficiency and capacity of the National Airspace System.

The coordinates for this airspace docket are based on North American Datum 83. Class B airspace areas are published in paragraph 3000 of FAA Order 7400.9M, Airspace Designations and Reporting Points, dated August 30, 2004, and effective September 16, 2004, which is incorporated by reference in 14 CFR 71.1. The Class B airspace area listed in this document would be published subsequently in the Order.

Regulatory Evaluation Summary

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act requires agencies to analyze the economic effect of regulatory changes on small businesses and other small entities. Third, the Office of Management and Budget directs agencies to assess the effect of regulatory changes on international trade. In conducting these analyses, the FAA has determined that this proposed rule: (1) Would generate benefits that justify its circumnavigation costs and is not a ''significant regulatory action'' as defined in the Executive Order; (2) is not significant as defined in the Department of Transportation's Regulatory Policies and Procedures; (3) would not have a significant impact on a substantial number of small entities; (4) would not constitute a barrier to international trade; and (5) would not contain any Federal intergovernmental or private sector mandate. These analyses are summarized here in the preamble, and the full Regulatory Evaluation is in the docket.

The NPRM would modify the Minneapolis-St. Paul, MN, Class B airspace area. The proposed rule would reconfigure the sub-area lateral boundaries, and raise the altitude ceiling in certain segments of the airspace.

The NPRM would generate benefits for system users and the FAA in the form of enhanced operational efficiency and simplified navigation in the MSP terminal area. These modifications would impose some circumnavigation costs on operators of non-compliant aircraft operating in the area around MSP. However, the cost of circumnavigation is considered to be small. Thus, the FAA has determined that the overall benefits generated by this proposed rule would be cost-beneficial.

Initial Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation.'' To achieve that principal, the Act requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The Act covers a wide-range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis (RFA) as described in the Act.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the 1980 Act provides that the head of the agency may so certify and an RFA is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

This proposed rule may impose some circumnavigation costs on individuals operating in the Minneapolis-St. Paul terminal area; but the proposed rule would not impose any costs on small business entities. Operators of general aviation aircraft are considered individuals, not small business entities and are not included when performing a regulatory flexibility analysis. Flight schools are considered small business entities. However, the FAA assumes that they provide instruction in aircraft equipped to navigate in Class B airspace given they currently provide instruction in the Minneapolis-St. Paul terminal area. Air taxis are also considered small business entities, but are assumed to be properly equipped to navigate Class B airspace because it is part of their current practice. Therefore, these small entities should not incur any additional costs as a result of the proposed rule. Accordingly, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Federal Aviation Administration certifies this rule would not have a significant economic impact on a substantial number of small entities. The FAA solicits comments from affected entities with respect to this finding and determination.

International Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or related

activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and where appropriate, that they be the basis for U.S. standards.

The proposed rule is not expected to affect trade opportunities for U.S. firms doing business overseas or for foreign firms doing business in the United States.

Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (the Act), enacted as Public Law 0104–4 on March 22, 1995, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure of $100 million or more (when adjusted annually for inflation) in any one year by State, local, and tribal governments in the aggregate, or by the private sector. Section 204(a) of the Act, 2 U.S.C. 1534(a), requires the Federal agency to develop an effective process to permit timely input by elected officers (or their designees) of State, local, and tribal governments on a proposed ''significant intergovernmental mandate.'' A ''significant intergovernmental mandate'' under the Act is any provision in a Federal agency regulation that would impose an enforceable duty upon State, local, and tribal governments in the aggregate of $100 million (adjusted annually for inflation) in any one year. Section 203 of the Act, 2 U.S.C. 1533, which supplements section 204(a), provides that, before establishing any regulatory requirements that might significantly or uniquely affect small governments, the agency shall have developed a plan, which, among other things, must provide for notice to potentially affected small governments, if any, and for a meaningful and timely opportunity for these small governments to provide input in the development of regulatory proposals.

This proposed rule does not contain any Federal intergovernmental or private sector mandates. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96–511), there are no requirements for information collection associated with this proposed rule.

Conclusion

In view of the minimal or zero cost of compliance of the proposed rule and the enhancements to operational efficiency that do not reduce aviation safety, the FAA has determined that the proposed rule would be cost-beneficial.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

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

Paragraph 3000—Class B Airspace.

* * * * *

AGL MN B Minneapolis-St. Paul, MN (Revised)

Minneapolis-St. Paul International (Wold-Chamberlain) Airport (Primary Airport)
(Lat. 44°53′00″ N., long. 93°13′01″ W.)
Gopher VORTAC
(Lat. 45°08′45″ N., long. 93°22′24″ W.)
Flying Cloud VOR/DME
(Lat. 44°49′33″ N., long. 93°27′24″ W.)
Point of Origin: Minneapolis-St. Paul International (Wold-Chamberlain) Airport DME Antenna (I–MSP DME)
(Lat. 44°52′28″ N., long. 93°12′24″ W.)

Boundaries

Area A. That airspace extending upward from the surface to and including 10,000 feet MSL within a 6-mile radius of I–MSP DME.

Area B. That airspace extending from 2,300 feet MSL to and including 10,000 feet MSL within an 8.5-mile radius of I–MSP DME, excluding Area A previously described.

Area C. That airspace extending from 3,000 feet MSL to and including 10,000 feet MSL within a 12-mile radius of I–MSP DME, excluding Area A and Area B previously described.

Area D. That airspace extending from 4,000 feet MSL to and including 10,000 feet MSL within a 20-mile radius of I–MSP DME and including that airspace within a 30-mile radius from the Flying Cloud 295° radial clockwise to the Gopher 295° radial and from the Gopher 115° radial clockwise to the Flying Cloud 115° radial, excluding Area A, Area B, and Area C previously described.

Area E. That airspace extending from 7,000 feet MSL to and including 10,000 feet MSL within a 30-mile radius of I–MSP DME from the Gopher 295° radial clockwise to the Gopher 352° radial, and from the Gopher 085° radial clockwise to the Gopher 115° radial, and from the Flying Cloud 115° radial clockwise to the Gopher 160° radial, and from the Gopher 170° radial clockwise to the Flying Cloud 295° radial excluding that airspace between a 25-mile radius and a 30-mile radius of I–MSP DME from the Flying Cloud 115° radial clockwise to the Gopher 160° radial, and excluding Area A, Area B, Area C, and Area D previously described.

Area F. That airspace extending from 6,000 feet MSL to and including 10,000 feet MSL within a 30-mile radius of I–MSP DME from the Gopher 160° radial clockwise to the Gopher 170° radial, excluding Area A, Area B, Area C, and Area D previously described.

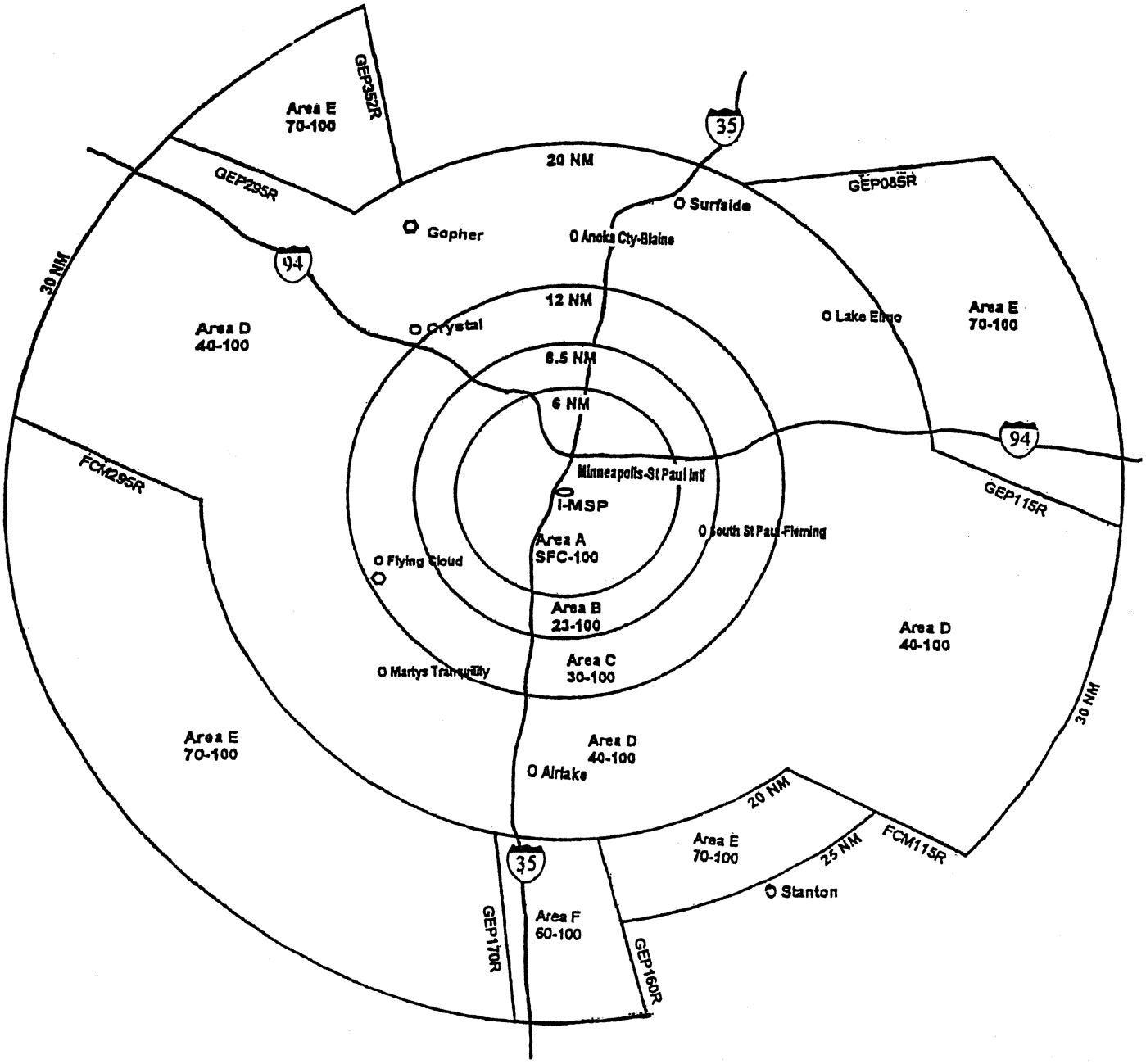
* * * * *

Issued in Washington, DC, on July 22, 2005.

Edith V. Parish,

Acting Manager, Airspace and Rules.

BILLING CODE 4910–13–P



Minneapolis Class B Expansion.

[FR Doc. 05–14976 Filed 7–28–05; 8:45 am]

BILLING CODE 4910–13–C

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

19 CFR Parts 101 and 122

[DHS Docket Number DHS–2005–0050]

Establishing a New Port-of-Entry in the Tri-Cities Area of Tennessee and Virginia and Terminating the User-Fee Status of the Tri-Cities Regional Airport

AGENCY: Customs and Border Protection, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to amend the Department of Homeland Security regulations pertaining to the Bureau of Customs and Border Protection's field organization by establishing a new port-of-entry in the Tri-Cities area of the States of Tennessee and Virginia, including the Tri-Cities Regional Airport. The new port-of-entry would include the same geographical boundaries of the current Customs and Border Protection User Fee Port No. 2082, which encompasses Sullivan County, Tennessee; Washington County, Tennessee; and Washington County, Virginia. The user-fee status of Tri-Cities Regional Airport, located in Blountville, Tennessee, will be terminated. These changes will assist the Bureau of Customs and Border Protection in its continuing efforts to provide better service to carriers, importers and the general public.

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

ADDRESSES: You may submit comments, identified by Docket Number DHS–2005–0050, 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.
- Mail and Hand Delivery/Courier: Regulations Branch, Office of Regulations and Rulings, Bureau of Customs and Border Protection, 1300 Pennsylvania Avenue, NW., (Mint Annex), Washington, DC 20229.

Instructions: All submissions received must include the agency name and docket number DHS–2005–0050. All comments received will be posted without change to *http://www.epa.gov/feddocket*, including any personal information provided.

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

FOR FURTHER INFORMATION CONTACT: Dennis Dore, Office of Field Operations, 202–344–2776.

SUPPLEMENTARY INFORMATION:

Background

As part of its continuing efforts to provide better service to carriers, importers, and the general public, the Department of Homeland Security (DHS), Bureau of Customs and Border Protection (CBP) is proposing to amend 19 CFR 101.3(b)(1) by establishing a new port-of-entry at Tri-Cities Regional Airport and the area which it services in the states of Tennessee and Virginia. The new port-of-entry would include the same geographical boundaries of the current CBP User Fee Port No. 2082, which encompasses Sullivan County, Tennessee; Washington County, Tennessee; and Washington County, Virginia. The boundaries would include Tri-Cities Regional Airport, located in Blountville, Tennessee, which currently operates and is listed as a user-fee airport at 19 CFR 122.15(b). This proposed change of status for Tri-Cities Regional Airport from a user-fee airport to inclusion within the boundaries of a port-of-entry would subject the airport to the passenger processing fee provided for at 19 U.S.C. 58c(a)(5)(B).

Port-of-Entry Criteria

The criteria considered by CBP in determining whether to establish a port-of-entry are found in Treasury Decision (T.D.) 82–37 (Revision of Customs Criteria for Establishing Ports of Entry and Stations, 47 FR 10137), as revised by T.D. 86–14 (51 FR 4559) and T.D. 87–65 (52 FR 16328). Under these criteria, CBP will evaluate whether there is a sufficient volume of import business (actual or potential) to justify the expense of maintaining a new office or expanding service at an existing location. Specifically, CBP will consider whether the proposed port-of-entry location can:

(1) Demonstrate that the benefits to be derived justify the Federal Government expense involved;

(2) Except in the case of land border ports, be serviced by at least two major modes of transportation (rail, air, water, or highway); and

(3) Except in the case of land border ports, have a minimum population of 300,000 within the immediate service area (approximately a 70-mile radius).

In addition, one of the following actual or potential workload criteria (minimum number of transactions per year), or an appropriate combination thereof, must be met in the area to be serviced by the proposed port-of-entry:

(1) 15,000 international air passengers;

(2) 2,500 formal consumption entries (each valued over $2,000), with the applicant location committing to optimal use of electronic data input means to permit integration with any CBP system for electronic processing of entries, with no more than half of the 2,500 entries being attributed to one private party;

(3) For land border ports, 150,000 vehicles;

(4) 2,000 scheduled international aircraft arrivals (passengers and/or crew); or

(5) 350 cargo vessel arrivals.

Finally, facilities at the proposed port of entry must include, where appropriate, wharfage and anchorage adequate for oceangoing vessels, cargo and passenger facilities, warehouse space for the secure storage of imported cargo pending final CBP inspection and release, and administrative office space, inspection areas, storage areas, and other space as necessary for regular CBP operations.

Tri-Cities' Workload Statistics

The proposal in this document to establish the Tri-Cites area as a port of entry is based on CBP's analysis of the following information:

1. Tri-Cities is serviced by three modes of transportation:

(a) Rail (The Norfolk Southern Railway and the CSX Corporation);

(b) Air (Tri-Cities Regional Airport); and

(c) Highway (three major U.S. highways: I–81; I–26; and U.S. 23).

2. The current population within a 60-mile service area of the Tri-Cities Regional Airport is 1,905,491.

3. Regarding the five actual or potential workload criteria, 3,522 entries were filed at Tri-Cities Regional User Fee Airport in 2003, with no more than half of the entries attributable to any one private party. The airport has averaged 3,540 entries annually over the past several years with the average value of each entry being $24,620. In the past eight (8) years, Tri-Cities has experienced a growth rate of 409 percent in the number of entries filed.

Approximately 251 companies (primarily importers) are currently serviced by the airport.

CBP facilities are already in place at the Tri-Cities Regional User Fee Airport. CBP believes that the establishment of this port will provide significant benefits to the local community, further enhancing the economic growth that is already being experienced in this area, by providing enhanced business competitiveness for existing enterprises and enabling the retention and expansion of the number of jobs in the area.

The Tri-Cities Regional Airport is committed to continue making the optimal use of electronic data transfer capability to permit integration with the CBP Automated Commercial System for processing entries. This commitment is shown in the current financial support, furnished by the Tri-Cities Airport Commission, of an interstate dedicated data line and computer upgrades. Since October 1, 2003, two companies, each with the automated capacity to interface with CBP, have occupied established offices in the Tri-Cities Airport.

Description of Proposed Port-of-Entry Limits

The geographical limits of the proposed Tri-Cities, TN/VA, port of entry would be as follows:

The contiguous outer boundaries of Sullivan County, Tennessee; Washington County, Tennessee; and Washington County, Virginia.

Proposed Amendments to Regulations

If the proposed port of entry designation is adopted, the list of CBP ports of entry at 19 CFR 101.3(b)(1) will be amended to add Tri-Cities, TN/VA, as a port of entry in Tennessee, and ''Tri-City Regional Airport'' will be deleted from the list of user-fee airports at 19 CFR 122.15(b). Note that the regulations currently refer to the airport as ''Tri-City'' rather than the correct ''Tri-Cities.''

Comments

Before adopting this proposal, consideration will be given to any written comments that are timely submitted to CBP. All such comments received from the public pursuant to this notice of proposed rulemaking will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552) and 19 CFR 103.11(b), during regular business days between the hours of 9 a.m. and 4:30 p.m. at the Regulations Branch, Office of Regulations and Rulings, Customs and Border Protection, Department of Homeland Security, 799 9th Street, NW., Washington, DC. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 572–8768. Comments may also be accessed on the EPA Partner EDOCKET Web site or Federal eRulemaking Portal. For additional information on accessing comments via the EPA Partner EDOCKET Web Site or Federal eRulemaking Portal, see the **ADDRESSES** section of this document.

Authority

This change is proposed under the authority of 5 U.S.C. 301 and 19 U.S.C. 2, 66, and 1624.

The Regulatory Flexibility Act and Executive Order 12866

With DHS approval, CBP establishes, expands and consolidates CBP ports of entry throughout the United States to accommodate the volume of CBP-related activity in various parts of the country. The Office of Management and Budget has determined that this regulatory action is not significant within the meaning of Executive Order 12866. This proposed rule also will not have a significant economic impact on a substantial number of small entities. Accordingly, it is certified that this document is not subject to the additional requirements of the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Signing Authority

The signing authority for this document falls under 19 CFR 0.2(a) because the establishment of a new port-of-entry and the termination of the user-fee status of an airport are not within the bounds of those regulations for which the Secretary of the Treasury has retained sole authority. Accordingly, this notice of proposed rulemaking may be signed by the Secretary of Homeland Security (or his or her delegate).

Dated: July 25, 2005.

Michael Chertoff,

Secretary.

[FR Doc. 05–15045 Filed 7–28–05; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

[Docket No. DEA–269P]

Schedules of Controlled Substances: Placement of Embutramide Into Schedule III

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule is issued by the Deputy Administrator of the Drug Enforcement Administration (DEA) to place the substance embutramide, including its salts, into Schedule III of the Controlled Substances Act (CSA). This proposed action is based on a recommendation from the Acting Assistant Secretary for Health of the Department of Health and Human Services (DHHS) and on an evaluation of the relevant data by DEA. If finalized, this action will impose the regulatory controls and criminal sanctions applicable to Schedule III on those who handle embutramide and products containing embutramide.

DATES: Written comments must be postmarked, and electronic comments must be sent, on or before August 29, 2005.

ADDRESSES: To ensure proper handling of comments, please reference ''Docket No. DEA–269P'' on all written and electronic correspondence. Written comments being sent via regular mail should be sent to the Deputy Administrator, Drug Enforcement Administration, Washington, DC 20537, Attention: DEA **Federal Register** Representative/ODL. Written comments sent via express mail should be sent to the Deputy Administrator, Drug Enforcement Administration, Attention: DEA **Federal Register** Representative/ ODL, 2401 Jefferson-Davis Highway, Alexandria, VA 22301. Comments may be directly sent to DEA electronically by sending an electronic message to *dea.diversion.policy@usdoj.gov*. Comments may also be sent electronically through *http://www.regulations.gov* using the electronic comment form provided on that site. An electronic copy of this document is also available at the *http://www.regulations.gov* Web site. DEA will accept electronic comments containing MS Word, WordPerfect, Adobe PDF, or Excel file formats only. DEA will not accept any file format other than those specifically listed here.

FOR FURTHER INFORMATION CONTACT: Christine Sannerud, Ph.D., Chief, Drug and Chemical Evaluation Section, Drug Enforcement Administration, Washington, DC 20537, (202) 307–7183.

SUPPLEMENTARY INFORMATION:

Note Regarding This Scheduling Action

In accordance with the provisions of the Controlled Substances Act (21 U.S.C. 811(a)), this action is a formal rulemaking ''on the record after opportunity for a hearing.'' Such proceedings are conducted pursuant to the provisions of the Administrative Procedure Act (5 U.S.C. 556 and 557). Interested persons are invited to submit their comments, objections or requests for a hearing with regard to this proposal. Requests for a hearing should be filed in accordance with 21 CFR 1308.44 and should state, with particularity, the issues concerning which the person desires to be heard. All correspondence regarding this matter should be submitted to the Drug Enforcement Administration using the address information provided above.

Background

Embutramide is a central nervous system depressant drug. On May 20, 2005, the Food and Drug Administration (FDA) approved a New Animal Drug Application (NADA) that provides for veterinary prescription use of Tributame™ Euthanasia Solution containing embutramide, chloroquine phosphate, and lidocaine by intravenous injection for euthanasia of dogs (70 FR 36336). Embutramide as one of the ingredients in the veterinary euthanasia drug product, T–61, was previously marketed in the United States. T–61 was withdrawn from the market in 1991.

Embutramide is a derivative of gamma-hydroxybutyric acid (GHB). Its chemical name is N-[2-(m-methoxyphenyl)-2-ethyl-butyl]-*gamma*-hydroxybutyramide (CAS number 15687–14–6). Embutramide shares pharmacological similarities with other central nervous system (CNS) depressants such as barbiturates, GHB and ketamine. It produces a reversible stupor-like state (narcosis) in experimental animals.

The effects of embutramide on locomotor activity, rearing, forelimb grip strength, hind-limb splay, and the performance of inverted screen tests on rodents were similar to those of pentobarbital. Embutramide produces complete substitution for the pentobarbital discriminative stimulus in mice. Methohexital-trained rhesus monkeys self-administer embutramide.

The pharmacological data suggest that the abuse potential of embutramide may be similar to that of CNS depressants such as barbiturates and their products (Schedules II through IV) and GHB and its product (Schedules I and III) that are controlled under the CSA. Case reports of suicides, attempted suicides, and accidental exposures involving embutramide containing products have been published in the scientific literature. Embutramide is not currently marketed in the United States. From 1998 to 2004, there were no law enforcement encounters of embutramide including seizures or cases.

On January 26, 2005, the Acting Assistant Secretary for Health, DHHS, sent the Deputy Administrator of DEA a scientific and medical evaluation and a letter recommending that embutramide be placed into Schedule III of the CSA. Enclosed with the January 26, 2005, letter was a document prepared by the FDA entitled, ''Basis for the Recommendation to Control Embutramide in Schedule III of the Controlled Substances Act (CSA).'' The document contained a review of the factors which the CSA requires the Secretary to consider (21 U.S.C. 811(b)).

The factors considered by the Acting Assistant Secretary of Health and DEA with respect to embutramide were:

(1) Its actual or relative potential for abuse;

(2) Scientific evidence of its pharmacological effects;

(3) The state of current scientific knowledge regarding the drug;

(4) Its history and current pattern of abuse;

(5) The scope, duration, and significance of abuse;

(6) What, if any, risk there is to the public health;

(7) Its psychic or physiological dependence liability; and

(8) Whether the substance is an immediate precursor of a substance already controlled under this subchapter. (21 U.S.C. 811(c))

Based on the recommendation of the Acting Assistant Secretary for Health, received in accordance with section 201(b) of the Act (21 U.S.C. 811(b)), and the independent review of the available data by DEA, the Deputy Administrator of DEA, pursuant to sections 201(a) and 201(b) of the Act (21 U.S.C. 811(a) and 811(b)), finds that:

(1) Based on information now available, embutramide has a low potential for abuse relative to the drugs or other substances in Schedules I and II;

(2) Embutramide has a currently accepted medical use in treatment in the United States; and

(3) Abuse of embutramide may lead to moderate or low physical dependence or high psychological dependence.

Based on these findings, the Deputy Administrator of DEA concludes that embutramide warrants control in Schedule III of the CSA.

Interested persons are invited to submit their comments, objections or requests for a hearing with regard to this proposal. Requests for a hearing should state, with particularity, the issues concerning which the person desires to be heard. All correspondence regarding this matter should be submitted to the Deputy Administrator, Drug Enforcement Administration, Washington, DC 20537, Attention: DEA **Federal Register** Representative/ODL. In the event that comments, objections, or requests for a hearing raise one or more issues which the Deputy Administrator finds warrant a hearing, the Deputy Administrator shall order a public hearing by notice in the **Federal Register**, summarizing the issues to be heard and setting the time for the hearing.

Requirements for Handling Embutramide

If this rule is finalized as proposed, embutramide would be subject to Controlled Substances Act and Controlled Substances Import and Export Act regulatory controls and administrative, civil and criminal sanctions applicable to the manufacture, distribution, dispensing, importing and exporting of a Schedule III controlled substance, including the following:

Registration. Any person who manufactures, distributes, dispenses, imports, exports, engages in research or conducts instructional activities with embutramide, or who desires to manufacture, distribute, dispense, import, export, engage in instructional activities or conduct research with embutramide, would need to be registered to conduct such activities in accordance with Part 1301 of Title 21 of the Code of Federal Regulations.

Security. Embutramide would be subject to Schedule III-V security requirements and must be manufactured, distributed and stored in accordance with §§ 1301.71, 1301.72(b), (c), and (d), 1301.73, 1301.74, 1301.75(b) and (c), 1301.76, and 1301.77 of Title 21 of the Code of Federal Regulations.

Labeling and Packaging. All labels and labeling for commercial containers of embutramide which are distributed after finalization of this rule would need to comply with requirements of §§ 1302.03–1302.07 of Title 21 of the Code of Federal Regulations.

Inventory. Every registrant required to keep records and who possesses any quantity of embutramide would be required to keep an inventory of all stocks of embutramide on hand pursuant to §§ 1304.03, 1304.04 and 1304.11 of Title 21 of the Code of Federal Regulations. Every registrant who desires registration in Schedule III for embutramide would be required to conduct an inventory of all stocks of the substance on hand at the time of registration.

Records. All registrants would be required to keep records pursuant to §§ 1304.03, 1304.04, 1304.21, 1304.22, and 1304.23 of Title 21 of the Code of Federal Regulations.

Prescriptions. All prescriptions for embutramide or prescriptions for products containing embutramide would be required to be issued pursuant to 21 CFR 1306.03–1306.06 and 1306.21–1306.27. All prescriptions for embutramide or products containing embutramide issued after publication of the Final Rule, if authorized for refilling, would be limited to five refills.

Importation and Exportation. All importation and exportation of embutramide would need to be in compliance with part 1312 of Title 21 of the Code of Federal Regulations.

Criminal Liability. Any activity with embutramide not authorized by, or in violation of, the Controlled Substances Act or the Controlled Substances Import and Export Act occurring on or after finalization of this proposed rule would be unlawful.

Regulatory Certifications

Executive Order 12866

In accordance with the provisions of the CSA (21 U.S.C. 811(a)), this action is a formal rulemaking ''on the record after opportunity for a hearing.'' Such proceedings are conducted pursuant to the provisions of 5 U.S.C. 556 and 557 and, as such, are exempt from review by the Office of Management and Budget pursuant to Executive Order 12866, section 3(d)(1).

Regulatory Flexibility Act

The Deputy Administrator, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this proposed rule and by approving it certifies that it will not have a significant economic impact on a substantial number of small entities. Embutramide products will be prescription drugs used for the euthanasia of animals. Handlers of embutramide also handle other controlled substances used to euthanize animals which are already subject to the regulatory requirements of the CSA.

Executive Order 12988

This regulation meets the applicable standards set forth in Sections 3(a) and 3(b)(2) of Executive Order 12988 Civil Justice Reform.

Executive Order 13132

This rulemaking does not preempt or modify any provision of state law; nor does it impose enforcement responsibilities on any state; nor does it diminish the power of any state to enforce its own laws. Accordingly, this rulemaking does not have federalism implications warranting the application of Executive Order 13132.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $115,000,000 or more in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices: or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Narcotics, Prescription drugs.

Under the authority vested in the Attorney General by section 201(a) of the CSA (21 U.S.C. 811(a)), and delegated to the Administrator of DEA by Department of Justice regulations (28 CFR 0.100), and redelegated to the Deputy Administrator pursuant to 28 CFR 0.104, the Deputy Administrator hereby proposes that 21 CFR part 1308 be amended as follows:

PART 1308—SCHEDULES OF CONTROLLED SUBSTANCES [AMENDED]

1. The authority citation for Part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b), unless otherwise noted.

2. Section 1308.13 is proposed to be amended by redesignating paragraphs (c)(5) through (c)(13) as paragraphs (c)(6) through (c)(14), and adding a new paragraph (c)(5) to read as follows:

§ 1308.13 Schedule III.

* * * * *

(c) * * *

(5) Embutramide XXXX

* * * * *

Dated: July 22, 2005.

Michele M. Leonhart,

Deputy Administrator.

[FR Doc. 05–15035 Filed 7–28–05; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–149436–04]

RIN 1545–BD92

Return Required by Subchapter T Cooperatives Under Section 6012

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations that prescribe the form that cooperatives must use to file their income tax returns. The regulations affect all cooperatives that are currently required to file an income tax return on either Form 1120, ''U.S. Corporation Income Tax Return,'' or Form 990–C, ''Farmers'' Cooperative Association Income Tax Return.''

DATES: Written or electronic comments and requests for a public hearing must be received by October 27, 2005.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–149436–04), room 5203, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:LPD:PR (REG–149436–04), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC, or sent electronically, via the IRS Internet site at *http://www.irs.gov/regs*, or via the Federal eRulemaking Portal at *http://www.regulations.gov* (IRS–REG–149436–04). A public hearing may be scheduled if requested by any person who timely submits comments.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations,

Donnell M. Rini-Swyers, (202) 622–4910; concerning submissions of comments, or to request a hearing, Richard Hurst, (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

Under existing regulations, all cooperatives to which subchapter T applies (Subchapter T cooperatives) are required to make income tax returns. Except in the case of farmers' cooperatives, the regulations require that the return be made on Form 1120. In the case of farmers' cooperatives, the regulations require that the return be made on Form 990–C.

Most taxpayers required to make an income tax return on Form 1120 must file their return on or before the 15th day of the third month following the close of the taxpayer's taxable year (2½ month deadline). Some Subchapter T cooperatives that make their returns on Form 1120 are required to file by the 2½ month deadline, but others are not required to file their returns until the 15th day of the ninth month following the close of the taxpayer's taxable year (8½ month deadline). Because the Form 1120 does not distinguish between Subchapter T cooperatives that must file by the 2½ month deadline and those that must file by the 8½ month deadline, the IRS has difficulty determining which filing deadline applies and deciding whether to assert delinquency and failure to pay penalties in the case of returns filed after the 2½ month deadline.

Explanation of Provisions

The proposed regulations provide that all Subchapter T cooperatives must make their income tax returns on Form 1120–C, ''U.S. Income Tax Return for Cooperative Associations,'' or such other form as may be designated by the Commissioner. The information that Subchapter T cooperatives will be required to provide on new Form 1120–C will assist taxpayers and the IRS in determining the appropriate filing deadline. Having that information will reduce the burden on taxpayers and will help the IRS avoid asserting penalties in inappropriate cases. Having all Subchapter T cooperatives make their income tax returns on Form 1120–C will also eliminate confusion over which form to file and will promote efficiency in addressing income tax issues common to Subchapter T cooperatives.

Effect on Other Documents

The following publication is obsolete as of [*DATE THIS DOCUMENT IS PUBLISHED AS A FINAL RULE IN FEDERAL REGISTER*].

Announcement 84–26 (1984–11 I.R.B. 42).

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because these regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and Treasury Department request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public inspection and copying. A public hearing will be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is Donnell M. Rini-Swyers, Office of Assistant Chief Counsel (Procedure & Administration).

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES, REPORTING AND RECORDKEEPING REQUIREMENTS

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

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

Par. 2. Section 1.6012–2 is amended by revising paragraph (f) to read as follows:

§ 1.6012–2 Corporations required to make returns of income.

* * * * *

(f) *Subchapter T cooperatives*—(1) *In general.* For taxable years ending on or after December 31, 2006, a cooperative organization described in section 1381 (including a farmers' cooperative exempt from tax under section 521) is required to make a return, whether or not it has taxable income and regardless of the amount of its gross income, on Form 1120–C, ''U.S. Income Tax Return for Cooperative Associations,'' or such other form as may be designated by the Commissioner.

(2) *Farmers' cooperatives.* For taxable years ending before December 31, 2006, a farmers' cooperative organization described in section 521(b)(1) (including a farmers' cooperative that is not exempt from tax under section 521) is required to make a return on Form 990–C, ''Farmers'' Cooperative Association Income Tax Return.''

* * * * *

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 05–15060 Filed 7–28–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD01–05–061]

RIN 1625–AA09

Drawbridge Operation Regulations; Hackensack River, NJ

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to change the drawbridge operating regulations governing the operation of the Willis Amtrak Portal Bridge, mile 5.0, across the Hackensack River at Little Snake Hill, New Jersey. This notice of proposed rulemaking would allow the bridge owner to expand the two time periods in the morning and in the afternoon, Monday through Friday, when the bridge may remain closed to vessel traffic.

DATES: Comments must reach the Coast Guard on or before August 29, 2005.

ADDRESSES: You may mail comments to Commander (obr), First Coast Guard

District Bridge Branch, One South Street, Battery Park Building, New York, New York, 10004, 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 (212) 668–7165. 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. Joe Arca, Project Officer, First Coast Guard District, (212) 668–7165.

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 (CGD01–05–061), 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 Amtrak Portal Bridge has a vertical clearance of 23 feet at mean high water and 28 feet at mean low water in the closed position. The existing operating regulations are listed at 33 CFR 117.723(c).

The owner of the bridge, National Railroad Passenger Corporation (AMTRAK), requested a change to the drawbridge operation regulations that would expand the two time periods in the morning and afternoon, Monday through Friday, when the bridge may remain closed to vessel traffic.

Rail traffic during the morning and afternoon commuter periods has increased. Bridge openings during the two commuter time periods have caused delays to rail traffic prompting the bridge owner to request the expansion of the bridge closure periods Monday through Friday.

The Coast Guard decided to conduct a test to help determine if the proposed drawbridge operation schedule changes would not cause undue delays to vessel traffic.

On February 26, 2004, the Coast Guard published a temporary 90-day deviation, with request for comment, (69 FR 8817) to test changes to the drawbridge operation regulations for the Amtrak Portal Bridge identical to those proposed in this notice of proposed rulemaking. That temporary deviation was in effect from March 1, 2004, through May 29, 2004. We received nine comment letters in response to the temporary deviation and request for comment. All the comment letters were in favor of making the tested drawbridge operation schedule a permanent rule change.

On November 23, 2004, we published a second 90-day deviation (69 FR 68079) to test the same drawbridge operation schedule as above during the winter months of the year. The second test deviation was in effect from December 13, 2004 through March 12, 2005. We received eight comment letters in response to our second test deviation. All eight letters were in favor of the proposed rule change.

The existing drawbridge operation regulations allow the bridge to remain closed to vessel traffic, Monday through Friday, from 7:20 a.m. to 9:20 a.m. and from 4:30 p.m. to 6:50 p.m., daily. Under this proposed rule the Amtrak Portal Bridge would not open for vessel traffic, Monday through Friday, from 6 a.m. to 10 a.m. and from 4 p.m. to 8 p.m., daily. Additional bridge openings would be provided for commercial vessels from 6 a.m. to 7:20 a.m., from 9:20 a.m. to 10 a.m., from 4 p.m. to 4:30 p.m. and from 6:50 p.m. to 8 p.m., if at least a one-hour advance notice is given by calling the number posted at the bridge.

Discussion of Proposed Rule

This proposed rule would amend 33 CFR 117.723 by revising paragraph (c), which details the Amtrak Portal Bridge operation schedule. Under this proposed rule the Amtrak Portal Bridge may remain closed for vessel traffic, Monday through Friday, from 6 a.m. to 10 a.m. and from 4 p.m. to 8 p.m.

Additional bridge openings would be provided for commercial vessels from 6 a.m. to 7:20 a.m., 9:20 a.m. to 10 a.m., 4 p.m. to 4:30 p.m. and from 6:50 p.m. to 8 p.m., provided at least a one-hour advance notice is given by calling the number posted 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.

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 expansion of the existing bridge closures were previously tested successfully with no objections from the marine facilities or operators that use this waterway.

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 expansion of the existing bridge closures were previously tested successfully with no objections from the marine facilities or operators that use this waterway.

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 (Public Law 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.

2. Section 117.723 is amended by revising paragraph (c) to read as follows:

§ 117.723 Hackensack River.

* * * * *

(c) Except as provided in paragraph (a)(1) of this section, the draw of the Amtrak Portal Bridge, mile 5.0, at Little Snake Hill, need not open for the passage of vessel traffic Monday through Friday, except Federal holidays, from 6 a.m. to 10 a.m. and from 4 p.m. to 8 p.m. Additional bridge openings shall be provided for commercial vessels from 6 a.m. to 7:20 a.m.; 9:20 a.m. to 10 a.m.; 4 p.m. to 4:30 p.m. and from 6:50 p.m. to 8 p.m., if at least a one-hour advance notice is given by calling the number posted at the bridge.

* * * * *

Dated: July 12, 2005.

David P. Pekoske,

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

[FR Doc. 05–15065 Filed 7–28–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD01–05–027]

RIN 1625–AA00

Safety Zone; New York Super Boat Race, Hudson River, NY

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to temporarily alter the effective period of the safety zone defined in 33 CFR 165.162 for the annual New York Super Boat Race. This temporary rule would change the effective date for this safety zone from Sunday, September 11, 2005 to Saturday, September 10, 2005 to permit the race sponsors to avoid interfering with various 9–11 memorial activities scheduled for the currently regulated date. This action is proposed to protect life on navigable waters during the event. No other changes to the original regulation are proposed.

DATES: Comments and related material must reach the Coast Guard on or before August 29, 2005.

ADDRESSES: You may mail comments and related material to Waterways Management Division (CGD01–05–027), Coast Guard Sector New York, 212 Coast Guard Drive, Staten Island, NY 10305. The Waterways Management Division of Coast Guard Sector New York 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 Waterways Management Division, Coast Guard Sector New York, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Commander B. Willis, Waterways Management Division, Coast Guard Sector New York at (718) 354–4220.

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 (CGD01–05–027), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments 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 Waterways Management Division 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 Coast Guard received the annual application to hold the New York Super Boat Race on the waters of the Hudson River. With this application, the event sponsor requested that the event be permitted to take place on Saturday, September 10, 2005, rather than the usual Sunday following Labor Day, which falls on September 11, 2005. The temporary deviation from the permanent regulation was requested to avoid interfering with the events scheduled in the area associated with the observance of 9–11.

Discussion of Proposed Rule

This rule would change the effective date for the safety zone established in 33 CFR 165.162 for the New York Super Boat Race for the current year only, and no other substantive regulatory changes are proposed. The proposed safety zone would be in effect from 10 a.m. until 4 p.m. on Saturday, September 10, 2005, and is needed to protect the waterway users from the hazards associated with high-speed powerboats racing in confined waters.

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).

The Coast Guard expects the economic impact of this proposed rule to be so minimal that a full Regulatory evaluation under paragraph 10e of the regulatory policies and procedures of DHS is unnecessary. Although this regulation prevents traffic from transiting a portion of the Lower Hudson River during the race, the effect of this regulation will not be significant for several reasons: It is an annual event with local support, the volume of commercial vessel traffic transiting the Lower Hudson River on a Saturday is similar to that on a Sunday and less than half of the normal weekday traffic volume; pleasure craft desiring to view the event will be directed to designated spectator viewing areas outside the safety zone; pleasure craft can take an alternate route through the East River and the Harlem River; the duration of the event is limited to six hours; extensive advisories will be made to the affected maritime community by Local Notice to Mariners, Safety Voice Broadcast, and facsimile notification. Additionally, commercial ferry traffic will be authorized to transit around the perimeter of the safety zone for their scheduled operations at the direction of the Patrol Commander.

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 proposed rule would 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 the Hudson River from 10 a.m. to 4 p.m. on September 10, 2005. This rule would not have a significant economic impact on a substantial number of small entities for the reasons stated in the Regulatory Evaluation section above.

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 Commander B. Willis, Waterways Management Division, Coast Guard Sector New York at (718) 354–4220. 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.

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. This rule fits the category selected from paragraph (34)(g), as it would modify the effective period of an existing safety zone regulation.

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 temporarily 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 10 a.m. to 4 p.m. on September 10, 2005, suspend § 165.162(c) and add § 165.162(d) to read as follows:

§ 165.162 Safety Zone; New York Super Boat Race, Hudson River, New York.

* * * * *

(d) *Effective Period.* This section is in effect from 10 a.m. until 4 p.m. on Saturday, September 10, 2005.

Dated: June 30, 2005.

Glenn A. Wiltshire,

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

[FR Doc. 05–15079 Filed 7–28–05; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R03–OAR–2005–MD–0009; FRL–7946–5]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; VOC RACT for Perdue Farms, Inc.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of Maryland. This revision pertains to a Consent Order establishing volatile organic compound (VOC) reasonably available control technology (RACT) for Perdue Farms, Incorporated. This action is being taken under the Clean Air Act (CAA or the Act).

DATES: Written comments must be received on or before August 29, 2005.

ADDRESSES: Submit your comments, identified by Regional Material in EDocket (RME) ID Number R03–OAR–2005–MD–0009 by one of the following methods:

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

B. Agency Web Site: *http://www.docket.epa.gov/rmepub/* RME, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.

C. E-mail: *campbell,dave@epa.gov.*

D. Mail: R03–OAR–2005–MD–0009, David Campbell, Chief, Air Quality Planning Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

E. Hand Delivery: At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to RME ID No. R03–OAR–2005–MD–0009. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *http://www.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 and the Federal regulations.gov Web sites are an ''anonymous access'' system, 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://www.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 during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Maryland Department of the Environment, 1800 Washington Boulevard, Suite 705, Baltimore, Maryland 21230.

FOR FURTHER INFORMATION CONTACT: Rose Quinto, (215) 814–2182, or by e-mail at *quinto.rose@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On May 31, 2005, the State of Maryland submitted a formal revision to its State Implementation Plan (SIP). The SIP revision consists of a Consent Order establishing VOC RACT for Perdue Farms, Incorporated (Perdue) located at 6906 Zion Church Road, Wicomico County, Maryland.

II. Summary of SIP Revision

Perdue operates a soybean oil extraction process that involves heating soybeans, pressing them into thin flakes, and extracting oil by rinsing the flakes with a hexane based solvent. The solvent is then evaporated from the solvent/oil mixture and the flakes, is condensed and reused. Hexane is a VOC and is discharged from the process in excess of the major source threshold.

Perdue has identified and implemented the following VOC RACT measures in order to reduce hexane emissions discharged from the process:

1. Installed and operates an automatic VOC leak monitoring system at Perdue. This system was installed and is operated in accordance with the manufacturer's specifications with appropriate set points to provide warning of leaks from the process;
2. Operates a mineral oil absorption system on the final VOC exhaust vent in accordance with the manufacturer's recommendations using groundwater as the cooling source that does not exceed 60 degrees F;
3. Installed screened sections in the desolventizing toaster to better provide product/steam contact to improve hexane recovery;
4. Installed a 10-inch diameter vapor line from the extractor to the distillation system to improve vacuum control in the extraction system; and
5. In order to minimize the loss of hexane in the soybean extraction process, prepared a standard operating procedures (SOP) document for the efficient operation of the soybean extraction process and a training manual which clearly and concisely identifies the operation of the process that is used for training new and existing operators. The manual includes good operating practices that will minimize VOC emissions and maximize hexane recovery. The SOP document and the training manual will be made available to the Maryland Department of the Environment (MDE) upon request.

In addition, Perdue has agreed to limit VOC emissions from the process to 0.3 gallons per ton of soybean processed in a calendar year to comply with RACT requirements. Perdue will prepare an annual hexane emissions report demonstrating compliance with the VOC emission standards and be made available to MDE upon request. Perdue will maintain the records required by this Consent Order for at least five years.

III. Proposed Action

EPA is proposing to approve a revision to the State of Maryland SIP to establish VOC RACT for Perdue Farms,

Inc. located in Wicomico County, Maryland submitted on May 31, 2005. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

IV. 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 action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)). This action merely 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 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), because it 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 (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. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed 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. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings' issued under the executive order. This proposed rule pertaining to a Consent Order establishing VOC RACT for Perdue Farms, Inc. located in Wicomico County, Maryland, 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, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: July 22, 2005.

Donald S. Welsh,

Regional Administrator, Region III.

[FR Doc. 05–15052 Filed 7–28–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R03–OAR–2005–MD–0005; FRL–7946–4]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Repeal of NO_X Budget Program COMAR 26.11.27 and 26.11.28

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a revision to the Maryland State Implementation Plan (SIP). The revision repeals Maryland's Nitrogen Oxides (NO_X) Budget Program under COMAR 26.11.27 and 26.11.28. This program implemented Maryland's portion of the Ozone Transport Commission (OTC) regional cap and trade program to significantly reduce transport of ozone in 12 northeastern states and the District of Columbia (DC), an area known as the Ozone Transport Region (OTR). Maryland's OTC NO_X Budget Program has been superseded by its more stringent, federally-approved NO_X Reduction and Trading Program which satisfies the NO_X SIP Call. This action is in accordance with the Clean Air Act.

DATES: Written comments must be received on or before August 29, 2005.

ADDRESSES: Submit your comments, identified by Regional Material in EDocket (RME) ID Number R03–OAR–2005–MD–0005 by one of the following methods:

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

Agency Web site: *http://www.docket.epa.gov/rmepub/* RME, RPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.

E-mail: *campbell.dave@epa.gov*

Mail: R03–OAR–2005–MD–0005, David Campbell, Chief, Air Quality Planning Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

Hand Delivery: At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to RME ID No. R03–OAR–2005–MD–0005. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *http://www.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 and the Federal regulations.gov Web sites are an ''anonymous access'' system, 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://www.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 during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Maryland Department of the Environment, 1800 Washington Boulevard, Suite 705, Baltimore, Maryland 21230.

FOR FURTHER INFORMATION CONTACT: Marilyn Powers, (215) 814–2308, or by e-mail at *powers.marilyn@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Maryland's OTC NO_X Budget Program (OTC Program) implemented the State's portion of a regional cap and trade program to reduce NO_X emissions generated within the OTR. The regional program consisted of an agreement by member states, called a Memorandum of Understanding (MOU), which recognized that further reductions of NO_X beyond reasonably available control technology (RACT, termed Phase I) would be required for power plants and other large sources in order for the states in the OTR to meet the national ambient air quality standards (NAAQS). The OTC Program (termed Phase II) was implemented by Maryland and approved as part of the State's SIP on December 15, 2000 (65 FR 78416).

While the OTC Program was being implemented by certain states in the OTC, including Maryland, EPA finalized its rulemaking under the so-called ''NO_X SIP Call.'' A discussion of the relationship between OTC Program and the NO_X SIP Call may be found in EPA's Notice of Proposed Rulemaking (NPR) for the NO_X SIP Call (62 FR 60345, November 7, 1997). As discussed in the NPR, EPA recognized that the OTC Program was necessary for OTC states to make progress towards attainment of the one-hour ozone standard, and that coordination between the programs could eventually be accomplished because the timing and amount of emission reductions required by the OTC's Phase III were very close to those of NO_X SIP Call, although the reductions in the NO_X SIP Call were expected to be more stringent. EPA published its final rulemaking for the NO_X SIP Call on October 27, 1998 (63 FR 57356), which required 22 eastern states, including Maryland, as well as the District of Columbia, to submit SIP revisions to prohibit specified amounts of NO_X. As in the OTC program, the NO_X SIP Call established statewide NO_X budgets for each state to meet during the ozone season (May 1 through September 30). The SIP call rule also made express certain provisions for states currently operating the OTC trading programs to transition elements of their OTC programs to the NO_X SIP Call trading program. *See* 63 FR at 57356. Maryland adopted the model NO_X budget trading rule of the NO_X published with the NO_X SIP as COMAR 26.11.29—NO_X Reduction and Trading Program and COMAR 26.11.30—Policies and Procedures Relating to Maryland's NO_X Reduction and Trading Program. On January 10, 2001 (66 FR 1866), these regulations were approved as part of the Maryland SIP as fully meeting the NO_X SIP Call. Trading under Maryland's OTC Program ended in 2002. Pursuant to the NO_X SIP Call, in May 2003, Maryland began implementing the federally-approved NO_X SIP Call trading program, which contains more stringent, *i.e.,* lower, caps on NO_X emissions than the OTC program it replaced.

II. Summary of SIP Revision

On December 1, 2003, the State of Maryland submitted a formal revision to its SIP. The SIP revision repeals Maryland's OTC NO_X Budget Program under COMAR 26.11.27 (Post-RACT Requirements for NO_X Sources) and COMAR 26.11.28 (Policies and Procedures Relating to Maryland's NO_X Budget Program).

In Maryland, the NO_X SIP Call applies to electric generating units larger than 25 megawatts, as compared to an applicability of 15 megawatts under the OTC Program. There are, therefore, some small units between 15 and 25 megawatts that were subject to the OTC program, but not the NO_X SIP Call trading program. All of these units are peaking units which typically operate only a few days per year and are subject to RACT-based emissions limits. The OTC program state budget was 22,881 tons of NO_X, which was established using an EGU NO_X emission rate of 0.20 pounds NO_X per million Btu (lbs/mmBtu). In comparison, the NO_X SIP Call state budget is 15,603 tons of NO_X, based on a NO_X emission rate of 0.15 lbs/mmBtu for EGUs and 0.17 lbs/mmBtu for large non-EGUS. Maryland's requirements under the NO_X SIP Call are more stringent than the OTC program, and as noted above, supplants the requirement for Phase III under the OTC MOU [1]. Further, in accordance with CAA 110(1), repeal of the OTC program, which has been, as EPA intended, replaced with the more stringently capped NO_X SIP Call trading program, will not interfere with any applicable requirement concerning attainment or reasonable further progress or any other applicable requirement. The Metropolitan Washington, DC area attainment plan, the Philadelphia-Wilmington-Trenton area attainment plan, and the Baltimore attainment plan for one-hour ozone relied on the OTC NO_X Budget program to help meet reductions required in 2002, and relies on the NO_X SIP Call Program to help meet reductions required in 2005 and beyond.

III. Proposed Action

Maryland's OTC Program has been superseded by its NO_X Reduction and Trading Program, approved to satisfy the NO_X SIP Call. Its budget under the NO_X Reduction and Trading Program is lower than its budget under the OTC program, and repeal of the OTC program does not impact any attainment plan. EPA is proposing to approve Maryland's SIP revision to repeal its OTC NO_X Budget Program under COMAR 26.11.27 and 26.11.28. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

[1] As should be expected, the more stringent cap under the NO_X SIP Call trading programs results, for the most part, in fewer allowances being allocated to each individual trading source under the NO_X SIP Call trading program than under the OTC program. *Compare* COMAR 26.11.28.11 (allowance allocation under the OTC program) to COMAR 26.11.30.09 (allowances allocated under the NO_X SIP Call trading program).

IV. 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 action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)). This action merely 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 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), because it merely proposes to approve a state rule implementing a Federal requirement, 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 (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. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed 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. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order.

This proposed rule to repeal Maryland's NO_X Budget Trading Program under COMAR 29.11.27 and 29.11.28 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, Reporting and recordkeeping requirements.

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

Dated: July 22, 2005.

Donald S. Welsh,

Regional Administrator, Region III.

[FR Doc. 05–15051 Filed 7–28–05; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[R05–OAR–2005–IN–0004; FRL–7946–3]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Indiana; Lake County Sulfur Dioxide Regulations, Redesignation and Maintenance Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a State Implementation Plan (SIP) revision for the control of sulfur dioxide (SO_2) emissions in Lake County, Indiana. The SIP revision submitted by the Indiana Department of Environmental Management (IDEM) on April 8, 2005, and supplemented on July 6, 2005, amends 326 Indiana Administrative Code (IAC) Article 7. Indiana's revised SO_2 rule consists of changes to 326 IAC 7–4 which sets forth facility-specific SO_2 emission limitations and recordkeeping requirements for Lake County. The rule revision also reflects updates to company names, updates to emission limits currently in permits, deletion of facilities that are already covered by natural gas limits, or other corrections or updates. Due to changes in section numbers, references to citations in other parts of the rule have also been updated. EPA is also proposing to approve a request to redesignate the Lake County nonattainment area to attainment of the SO_2 National Ambient Air Quality Standards (NAAQS), which was submitted for parallel processing by IDEM on June 21, 2005. In conjunction with these actions, EPA is also proposing to approve the maintenance plan for the Lake County nonattainment area to ensure that attainment of the NAAQS will be maintained. The SIP revision, redesignation request and maintenance plan are approvable because they satisfy the requirements of the Clean Air Act (Act). The rationale for the approval and other information are provided in this notice.

DATES: Comments must be received on or before August 29, 2005.

ADDRESSES: Submit comments, identified by Regional Material in EDocket (RME) ID No. R05–OAR–2005–IN–0004, by one of the following methods:

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

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

E-mail: mooney.john@epa.gov.

Fax: (312) 886–5824.

Mail: You may send written comments to: John M. Mooney, Chief, Criteria Pollutant Section, (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Hand delivery: Deliver your comments to: John M. Mooney, Chief, Criteria Pollutant Section, (AR–18J),

U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, 18th floor, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m. excluding Federal holidays.

Instructions: Direct your comments to RME ID No. R05–OAR–2005–IN–0004. EPA's policy is that all comments received will be included in the public docket without change, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through RME, regulations.gov, or e-mail. The EPA RME Web site and the Federal regulations.gov Web site are ''anonymous access'' systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through RME or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the RME index at *http://docket.epa.gov/rmepub/.* Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Publicly available docket materials are available either electronically in RME or in hard copy at Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. We recommend that you telephone Christos Panos, Environmental Engineer, at (312) 353–8328 before visiting the Region 5 office. This Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Christos Panos, Environmental Engineer, Criteria Pollutant Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–8328. *panos.christos@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This supplemental information section is arranged as follows:

I. General Information
1. What action is EPA taking today?
2. Why is EPA taking this action?
II. Review of the State Submittals
1. What is the background for this action?
2. What information did Indiana submit, and what were its requests?
3. What changes did Indiana make to the Lake County SO_2 rules?
4. What are the results of the modeled attainment demonstration?
III. State Implementation Plan Approval
1. What requirements do SO_2 nonattainment areas have to meet?
2. How does the State's SIP revision meet the requirements of the Act?
IV. Redesignation Evaluation
1. What are the criteria used to review redesignation requests?
2. How are these criteria satisfied for Lake County?
V. Maintenance Plan
What are the maintenance plan requirements?
VI. Proposed Rulemaking Action and Solicitation of Public Comment
VII. Statutory and Executive Order Reviews

I. General Information

1. What Action Is EPA Taking Today?

In this action, EPA is proposing to approve into the Indiana SIP SO_2 emission limitations applicable in Lake County, Indiana. Specifically, EPA is proposing to approve amendments to rules 326 IAC 7–1.1–1, 326 IAC 7–1.1–2, 326 IAC 7–2–1, and newly created 326 IAC 7–4.1. The revised rules were adopted by the Indiana Air Pollution Control Board on March 2, 2005, and were submitted by IDEM to EPA on April 8, 2005. IDEM submitted a supplement to its submission on July 6, 2005, indicating that the revised rules became effective June 24, 2005 and were published in the Indiana Register on July 1, 2005. EPA is also proposing to approve the SO_2 redesignation request submitted by the State of Indiana to redesignate the Lake County SO_2 nonattainment area to attainment of the SO_2 NAAQS. Finally, EPA is proposing to approve the maintenance plan submitted for this area.

2. Why Is EPA Taking This Action?

EPA is taking this action because the State's submittal for the Lake County SO_2 nonattainment area is fully approvable. The revised rules amend SO_2 requirements for many sources in the nonattainment area, and reflect a reduction of over 30,000 tons of SO_2 per year of allowable emissions compared to the emission limits in the previously approved 1989 SIP. The SIP revision provides for attainment and maintenance of the SO_2 NAAQS and satisfies the requirements of part D of the Act applicable to SO_2 nonattainment areas. Further, EPA is approving the maintenance plan and redesignating the Lake County SO_2 nonattainment area to attainment because the State has met the redesignation and maintenance plan requirements of the Act. Under the Act, EPA may redesignate nonattainment areas to attainment if sufficient data are available to warrant such changes and the area meets the criteria contained in section 107(d)(3)(E). This includes full approval of a maintenance plan for the area. The requirements for a maintenance plan are found in section 175A of the Act. A more detailed explanation of how the State's submittal meets these requirements is contained below.

II. Review of the State Submittals

1. What Is the Background for This Action?

Lake County is located in northwest Indiana and is surrounded by the Indiana counties of Porter, Jasper and Newton. On March 3, 1978, at 43 FR 8962, EPA designated a portion of Lake County as a primary SO_2 nonattainment area, based on monitored violations of the primary SO_2 NAAQS. The SO_2 nonattainment area of Lake County is bounded by Lake Michigan to the north, the Indiana-Illinois State line to the west, the Lake-Porter County line on the east, and on the south it is bounded by U.S. 30 from the State line to the intersection of I–65, then following I–65 to the intersection of I–94, then following I–94 to the Lake-Porter County line. EPA approved a SO_2 SIP revision for Lake County on January 19, 1989 (54 FR 2112), consisting of source specific emission limits and other requirements in Indiana's county-specific rules. There are numerous SO_2 sources in Lake County, including steel mills, an oil refinery, and other industrial processes, that have SO_2 limits established in 326 IAC 7–4–1.1. Because these limits were outdated and did not demonstrate attainment, IDEM worked with the affected sources to update their emission limits in the rule, and performed emission modeling based on these limits that demonstrates

attainment of the SO_2 NAAQS in the Lake County area.

2. What Information Did Indiana Submit, and What Were Its Requests?

The SIP revision submitted by IDEM on April 8, 2005, and supplemented on July 6, 2005, consists of amendments to rules previously approved as part of the Lake County SO_2 SIP. In this submittal the State requested that we:

Amend 326 IAC 7–1.1–1 concerning applicability;
Amend 326 IAC 7–1.1–2 concerning SO_2 limitations;
Amend 326 IAC 7–2–1 concerning reporting requirements and methods to determine compliance;
Add 326 IAC 7–4.1 concerning Lake County SO_2 emission limitations; and,
Repeal 326 IAC 7–4–1.1.

The June 21, 2005, submittal requests that we use parallel processing to redesignate the Lake County SO_2 nonattainment area to attainment of the SO_2 NAAQS and classify it as a maintenance area.

3. What Changes Did Indiana Make to the Lake County SO_2 Rules?

The amendments to 326 IAC 7–1.1–1, 326 IAC 7–1.1–2, and 326 IAC 7–2–1 consist of clerical corrections and updates to citations made for consistency.

Section 326 IAC 7–4–1.1 is repealed and is being replaced by 326 IAC 7–4.1 as follows:

326 IAC 7–4.1–1 Lake County SO_2 emission limitations
326 IAC 7–4.1–2 Sampling and analysis protocol
326 IAC 7–4.1–3 BP Products North America Inc. SO_2 emission limitations
326 IAC 7–4.1–4 Bucko Construction SO_2 emission limitations
326 IAC 7–4.1–5 Cargill, Inc. SO_2 emission limitations
326 IAC 7–4.1–6 Carmeuse Lime SO_2 emission limitations
326 IAC 7–4.1–7 Cokenergy Inc. SO_2 emission limitations
326 IAC 7–4.1–8 Indiana Harbor Coke Company SO_2 emission limitations
326 IAC 7–4.1–9 Ironside Energy, LLC SO_2 emission limitations
326 IAC 7–4.1–10 ISG Indiana Harbor Inc. SO_2 emission limitations
326 IAC 7–4.1–11 Ispat Inland Inc. SO_2 emission limitations
326 IAC 7–4.1–12 Methodist Hospital SO_2 emission limitations
326 IAC 7–4.1–13 National Recovery Systems SO_2 emission limitations
326 IAC 7–4.1–14 NIPSCO Dean H. Mitchell Generating Station SO_2 emission limitations
326 IAC 7–4.1–15 Rhodia SO_2 emission limitations
326 IAC 7–4.1–16 Safety-Kleen Oil Recovery Company SO_2 emission limitations
326 IAC 7–4.1–17 SCA Tissue North America LLC SO_2 emission limitations
326 IAC 7–4.1–18 State Line Energy, LLC SO_2 emission limitations
326 IAC 7–4.1–19 Unilever HPC USA SO_2 emission limitations
326 IAC 7–4.1–20 U.S. Steel-Gary Works SO_2 emission limitations
326 IAC 7–4.1–21 Walsh and Kelly SO_2 emission limitations

A. *326 IAC 7–4.1–1 Lake County SO_2 emission limitations.* This section restricts all new and existing fossil fuel-fired combustion sources and facilities located in Lake County to burning only natural gas unless an alternate SO_2 emission limit is provided in the rule. Facilities with fuel combustion units that have a maximum capacity of less than twenty (20) million British thermal units (MMBtu) per hour actual heat input not located at a source specifically listed in the rule, may burn distillate oil with SO_2 emissions limited to three-tenths (0.3) pound per MMBtu. The restriction to natural gas for new and existing units that are not listed in the rule is necessary for protection of the SO_2 NAAQS.

B. *326 IAC 7–4.1–2 Sampling and analysis protocol.* This section requires facilities owned and/or operated by Cargill, Inc., BP Products North America Inc., Ispat Inland Inc., ISG Indiana Harbor Inc., Carmeuse Lime, and U.S. Steel–Gary Works to maintain a sampling and analysis protocol that specifies the frequency of sampling, analysis, and measurement for each fuel and material. This protocol will be incorporated into each facility's operating permit. The protocol may be revised as necessary to establish acceptable sampling, analysis, and measurement procedures and frequency, but the revised protocol must be submitted to IDEM for approval. The source may also be required to conduct a stack test at any facility listed in this section, subject to a thirty day written notification.

C. *326 IAC 7–4.1–3 through 326 IAC 7–4.1–21.* The remaining sections of 326 IAC 7–4.1 revise the format and style from the Table in 326 IAC 7–4–1.1(c) for clarity and ease of future revision by placing facility-specific requirements into the separate sections as listed above. Since the last time the rule was amended, certain facilities are operating under new permits, variances, or other agency actions, including new or updated information or emission limits. IDEM has updated the rule to reflect the current information in these documents. The changes made in the revised rule include the following:

i. Emission limits in pounds per hour and operating and production restrictions consistent with the modeled attainment demonstration have been added for all facilities.

ii. Changes to facility names have been updated as follows: BP Products North America Inc. (formerly AMOCO), Carmeuse Lime (formerly Marblehead Lime), Cerestar USA (formerly AMAIZO), ISG Indiana Harbor Inc. (formerly LTV Steel), Ispat Inland Inc. (formerly Inland Steel), National Recovery Systems (formerly National Briquette), SCA Tissue North America LLC (formerly Georgia Pacific), Rhodia (formerly Stauffer), Unilever (formerly Lever Brothers), and U.S. Steel–Gary Works (formerly USX).

iii. Specific changes to emission limits have been made to be consistent with permitted limits or to demonstrate attainment, through modeling, with the SO_2 NAAQS. Facilities with emission limit changes include: BP Products North America Inc., Carmeuse Lime, Cerestar USA, ISG Indiana Harbor Inc., Ispat Inland Inc., Methodist Hospital, Safety Kleen Oil Recovery Company, Rhodia, and U.S. Steel-Gary Works.

iv. New facilities that were previously part of a facility listed in the Table in 326 IAC 7–4–1.1 have been added. These include: Indiana Harbor Coke Company and Cokenergy (both affiliated with Ispat Inland Inc.)

v. Closed facilities have been removed. These facilities include: C&A Wallcovering, East Chicago Incinerator, Kaiser, Lehigh Portland Cement, and U.S. Reduction.

vi. Units that burn only natural gas and facilities with only natural gas units listed are subject to the natural gas emission limit in 326 IAC 7–4.1–1 and are no longer listed individually in the rule. Facilities removed from the rule for this purpose include: ASF-Keystone (formerly American Steel-Hammond), Ferro Corporation (formerly Keil Chemical), Horace Mann School, Huhtamaki Foods (formerly Keyes Fibre), Premiere Candy, Resco Products (formerly Harbison Walker), Silgan Containers Corporation (formerly American Can Company), and U.S. Gypsum.

vii. Equipment inventories have been updated, either adding or deleting units.

viii. Source codes for each facility have been added.

ix. Other minor corrections and clarifications have been made, such as correcting unit descriptions.

4. What Are the Results of the Modeled Attainment Demonstration?

The ambient impact of the SO_2 sources in Lake County was determined using the ISCST3 regulatory dispersion model (version 02035) with surface meteorological data from Hammond, Indiana from 1991 through 1995. The State ran the model with 1987 meteorological data as well, to show that the new SIP would be protective of the NAAQS using the worst-case year from the previous Lake County SO_2 SIP demonstration. The emission inventory for the Lake County attainment demonstration includes all the SO_2 emission points from the facilities subject to 326 IAC 7, and reflects an up-to-date inventory of the Lake County area's SO_2 emissions. For some facilities, the State performed separate modeling runs to evaluate alternate operating scenarios. This ensured that the facilities could be more flexible in their day-to-day operations, while still protecting the NAAQS. Representative background SO_2 concentrations were developed from monitored data at seven monitoring locations in Lake, LaPorte, and Porter Counties, and added to the final modeling results. The Lake County modeling demonstration, including background SO_2 levels, showed that the 3-hour, 24-hour, and annual SO_2 NAAQS would be protected under the current SO_2 rules.

III. State Implementation Plan Approval

1. What Requirements Do SO_2 Nonattainment Areas Have To Meet?

The Part D SIP requirements for SO_2 nonattainment areas are contained in section 172(c) of the Act, and pertain to: Reasonably Available Control Measures; Reasonable Further Progress; Inventory; Identification and Quantification; Permits for New and Modified Major Stationary Sources; Other Measures; Compliance with section 110(a)(2); Equivalent Techniques; and, Contingency Measures.

2. How Does the State's SIP Revision Meet the Requirements of the Act?

With this submission, Indiana will have a fully approvable SO_2 SIP. As described below, Indiana's submitted revision to its SO_2 SIP for the Lake County nonattainment area fully complies with the Part D requirements as set forth in section 172(c) of the Act.

A. *Reasonably Available Control Measures (RACM).* The plan complies with the requirements to implement RACM by providing for immediate attainment of the SO_2 NAAQS through the emission limits and operating restrictions imposed on the relevant sources by the revised rules.

B. *Reasonable Further Progress.* Reasonable further progress is achieved due to the immediate effect of the emission limits required by the plan.

C. *Inventory.* An inventory of the SO_2 emissions in the Lake County nonattainment area was provided by the State and has been found to be acceptable.

D. *Identification and Quantification.* This information is unnecessary because the area has not been identified as a zone for which economic development should be targeted.

E. *Permits for New and Modified Major Stationary Sources.* Any new or modified sources constructed in the area must comply with a state submitted and federally approved New Source Review (NSR) program. The Federal requirements for NSR in nonattainment areas are contained in section 172(c)(5) of the Act. EPA guidance indicates the requirements of the part D NSR program will be replaced by the Prevention of Significant Deterioration (PSD) program when an area has reached attainment and been redesignated, provided there are assurances that PSD will become fully effective upon redesignation. Indiana's PSD program was approved into the Indiana SIP on May 20, 2004 (69 FR 29071). The PSD program will become fully effective in the Lake County area immediately upon redesignation.

F. *Other Measures.* The plan provides for immediate attainment of the SO_2 NAAQS through the emission limitations, operating requirements, and compliance schedules that are set forth within state rules.

G. *Compliance with section 110(a)(2).* This submission complies with section 110(a)(2) of the Act, which identifies the requirements that a SIP shall meet. All of the applicable provisions of section 110(a)(2) are already required by the statutory provisions discussed in this plan, or they have already been met by Indiana's original SIP submission to EPA.

H. *Equivalent Techniques.* The modeling for this SIP submittal was conducted using EPA's ''Guideline on Air Quality Models (Revised).'' No equivalent techniques were used for modeling, emission inventory, or planning procedures.

I. *Contingency Measures.* Section 172(c)(9) of the Act defines contingency measures as measures in a SIP which are to be implemented if an area fails to make RFP or fails to attain the NAAQS by the applicable attainment date and shall consist of other control measures that are not included in the control strategy. However, the General Preamble to the 1990 Amendments to the Act (57 FR 13498), states that SO_2 measures present special considerations because they are based upon what is necessary to attain the NAAQS. Because SO_2 control measures are well established and understood, they are far less prone to uncertainty. It is considered unlikely that an area would fail to attain the standards after it has demonstrated, through modeling, that attainment is reached after the limits and restrictions are fully implemented and enforced. Therefore, for SO_2 programs, contingency measures mean that the state agency has the ability to identify sources of violations of the SO_2 NAAQS and to undertake an aggressive follow-up for compliance and enforcement. In order to respond to NAAQS violations IDEM will: (1) Determine whether an exceedance could be classified as an exceptional event; (2) evaluate available meteorological data and conduct modeling studies to determine which SO_2 sources, if any, are the cause of the problem; and (3) review the operating records of SO_2 sources to identify equipment malfunctions or permit or rule violations. Although the point sources listed in the State's inventory will be the primary focus, the study will not be limited to only those sources but will encompass all potential sources of SO_2. IDEM has the necessary enforcement and compliance programs, as well as the means to identify violators as described above, thus satisfying the contingency measures requirement.

IV. Redesignation Evaluation

1. What Are the Criteria Used To Review Redesignation Requests?

Section 107(d)(3)(E) of the Act establishes the requirements to be met before an area may be redesignated from nonattainment to attainment. Approvable redesignation requests must meet the following conditions: The area has attained the applicable NAAQS; the area has a fully approved SIP under section 110(k) of the Act; the air quality improvement in the area is due to permanent and enforceable emission reductions; the maintenance plan for the area has met all the requirements of section 175A of the Act; and, the state has met all the requirements applicable to the area under section 110 and part D of the Act.

2. How Are These Criteria Satisfied for Lake County?

A. *Demonstrated Attainment of the NAAQS.* Indiana's June 21, 2005, submittal includes a table summarizing

ambient air monitoring data showing no exceedances of the SO_2 NAAQS in Lake County since 1996. There are currently two monitors operating within the Lake County area, one in Gary and one in Hammond. The redesignation request is based upon air quality data collected and quality assured for the most recent three whole calendar years (2002–2004). This data indicates that the ambient air quality attains the annual and 24-hour health-based primary standards, and the 3-hour secondary standard.

Dispersion modeling is commonly used to demonstrate attainment of the SO_2 NAAQS. The State's modeling analysis was included in the April 8, 2005, submittal. The modeling demonstrates that, under all the operating scenarios allowed for in the SIP, the SO_2 emission limits for the relevant sources in Lake County are adequate to show attainment and maintenance of the SO_2 standards. A more detailed discussion of the modeling evaluation is included elsewhere in this notice.

B. *Fully Approved SIP.* The SIP for the area must be fully approved under section 110(k) of the Act and must satisfy all requirements that apply under section 110 and part D of the Act. To satisfy these requirements, EPA is proposing to approve the State's April 8, 2005, submittal containing Lake County SO_2 limits into the SIP, as discussed in other sections of this rulemaking. Therefore, both the SIP revision and the redesignation request for Lake County will comply with the section 110(k) and part D requirements of the Act upon final approval of these actions.

EPA approval of a transportation conformity SIP revision for the area is not required for this redesignation because the nature of the area's previous SO_2 nonattainment problem has been determined to be overwhelmingly attributable to stationary sources. The April 8, 2005, submittal contains a detailed emissions inventory of the allowable emissions for all of the major SO_2 sources in the area. Area and mobile source SO_2 emissions are insignificant in comparison to the emissions from stationary sources and estimated background concentrations used in the modeled attainment demonstration.

C. *Permanent and Enforceable Reductions in Emissions.* Lake County was designated nonattainment of the SO_2 NAAQS based on violations that occurred prior to 1978. Air quality improvement in the Lake County SO_2 nonattainment area is attributed to SO_2 emission limits and operating restrictions imposed on the facilities that contributed to the nonattainment status in Lake County. These limits are permanent and enforceable by means of non-expiring state regulations. Emissions from these sources were modeled with the control measures in place. The data submitted by the State shows modeled attainment of the SO_2 NAAQS in Lake County.

D. *Fully Approved Maintenance Plan.* EPA has concluded that the SO_2 emissions limitations contained in the plan submitted by the State will assure maintenance of the SO_2 standards. EPA is proposing to approve the maintenance plan in today's action as discussed below.

E. *Part D and Other Section 110 Requirements.* Section 107(d)(3)(E)(v) of the Act states that the Administrator may not redesignate an area to attainment unless the area has met the applicable requirements under section 110 and Part D. As, discussed above, the requirements under section 110 and Part D will be met upon final approval of the SIP revision submitted by the State on April 8, 2005, and supplemented on July 6, 2005.

V. Maintenance Plan

What Are the Maintenance Plan Requirements?

Section 175A of the Act requires states to submit a SIP revision which provides for the maintenance of the NAAQS in the area for at least 10 years after approval of the redesignation. Consistent with the Act's requirements, EPA developed procedures for redesignation of nonattainment areas that are contained in a September 4, 1992, memorandum titled, ''Procedures for Processing Requests to Redesignate Areas to Attainment.'' This EPA guidance document contains a number of maintenance plan provisions that a State should consider before it can request a change in designation for a federally designated nonattainment area. The basic components needed to ensure proper maintenance of the NAAQS are: Attainment inventory, maintenance demonstration, ambient air monitoring network, verification of continued attainment, and a contingency plan.

A. *Attainment Inventory.* The air dispersion modeling included in the State's submittal contains the emission inventory of SO_2 sources for Lake County.

B. *Maintenance Demonstration.* The modeled attainment demonstration submitted by Indiana on April 8, 2005, shows attainment and maintenance of the SO_2 NAAQS. Steel mills, an oil refinery, and other industrial processes are the primary sources of SO_2 in the Lake County area. Permanent and enforceable reductions of SO_2 emissions in Lake County contributed to the attainment of the SO_2 standards. Reductions of SO_2 emissions between the year that violations occurred (pre-1979) and the year attainment was achieved (2004) are attributable to the closure of stationary sources or emissions units, substantial emissions reductions at U.S. Steel-Gary Works, and reduced emission limits for certain units at Cargill, Ispat Inland, and Carmeuse Lime facilities. Subsequent to redesignation, any future increases in emissions and/or significant changes to the stack configuration parameters from those modeled in the attainment demonstration due to new or modifying stationary sources, would be subject to the Indiana SIP's NSR and/or PSD requirements including a demonstration that the NAAQS and applicable PSD increments are protected. Although total SO_2 emissions from all sources are projected to increase between 2004 and 2015 due to economic growth, the submitted modeling results indicate future NAAQS maintenance of the area. Emissions in 2015 are projected to be higher than 2002 and 2003, however, emissions in 2001 and prior years were higher than the projections for 2015, and there were no exceedances of the SO_2 NAAQS recorded in 2001. Further, the attainment modeling assumes a potential to emit of 120,800 tons per year of SO_2. This therefore confirms that the projected growth in actual emissions to 43,568 tons of SO_2 in 2015, will not cause a violation of the SO_2 NAAQS.

C. *Monitoring Network.* Indiana has indicated in the submitted maintenance plan that it will continue to monitor SO_2 in the Lake County area in accordance with 40 CFR parts 53 and 58 to verify continued attainment with the NAAQS for SO_2. The data will continue to be entered into the Air Quality Subsystem (AQS) of the Aerometric Information Retrieval System (AIRS). IDEM will consult with EPA Region 5 staff prior to making any changes to the existing monitoring network should changes be necessary in the future.

D. *Verification of Continued Attainment.* Indiana has committed in the maintenance plan to review the monitored data annually, and to submit a maintenance plan update eight years after redesignation which will contain IDEM's plan for maintaining the SO_2 NAAQS for 10 years beyond the first 10-year period after redesignation (2015–2025). Further, IDEM commits to maintain the control measures listed above after redesignation and that any changes to its rules or emission limits applicable to SO_2 sources, as required

for maintenance of the SO_2 standards in Lake County, will be submitted to EPA for approval as a SIP revision. This will include, where appropriate, a demonstration based on modeling that the standard will be maintained.

E. *Contingency Plan*. Section 175A of the Act requires that the maintenance plan include contingency provisions to correct any violation of the NAAQS after redesignation of the area. These contingency measures are distinguished from those generally required for nonattainment areas under section 172(c)(9). IDEM will rely on ambient air monitoring data in the Lake County area to track compliance with the SO_2 NAAQS and to determine the need to implement contingency measures. In the event that an exceedance of the SO_2 NAAQS occurs, the State will expeditiously investigate and determine the source(s) that caused the exceedance and/or violation, and enforce any SIP or permit limit that is violated. If there is a violation of the SO_2 NAAQS, and it is not due to an exceptional event, malfunction, or noncompliance with a permit condition or rule requirement, IDEM will determine additional control measures needed to assure future attainment of the SO_2 NAAQS. Control measures that can be implemented in a short time will be selected in order to be in place within eighteen (18) months from the time that IDEM is aware that the violation occurred. Although the point sources listed in the inventory will be the primary focus, the possibility that the problem is attributable to new or previously unknown SO_2 sources will also be considered. Indiana will submit to EPA an analysis to demonstrate the proposed measures are adequate to return the area to attainment. Adoption of any additional control measures is subject to the necessary administrative and legal process. This process will include publication of notices, an opportunity for public hearing, and other measures required by Indiana law for rulemaking by state environmental boards.

VI. Proposed Rulemaking Action and Solicitation of Public Comment

EPA is proposing to approve the SIP revision for the control of SO_2 emissions in Lake County, Indiana, as requested by the State on April 8, 2005, and supplemented on July 6, 2005. The revision consists of the amended rule at 326 Indiana Administrative Code (IAC) Article 7. In this rule, the requirements in the Table in 326 IAC 7–4–1.1 have been divided into separate sections for each facility for clarity and ease of future rule actions. The new rule, 326 IAC 7–4.1, replaces 326 IAC 7–4–1.1, which will be repealed. Because the State has complied with the requirements of section 107(d)(3)(E) of the Act, EPA is also proposing to approve the redesignation of the Lake County nonattainment area to attainment of the SO_2 NAAQS, as requested by the State on June 21, 2005. In conjunction with these actions, EPA is also proposing to approve Indiana's maintenance plan for the Lake County SO_2 nonattainment area as a SIP revision because it meets the requirements of section 175A of the Act.

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate rulemaking identification number by including the text ''Public comment on proposed rulemaking Region 5 Air Docket R05–OAR–2005–IN–0004'' 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.

VII. Statutory and Executive Order Reviews

Executive Order 12866; Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget.

Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

Because it is not a ''significant regulatory action'' under Executive Order 12866 or a ''significant energy action,'' this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001).

Regulatory Flexibility Act

This 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.*).

Unfunded Mandates Reform Act

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

Executive Order 13175 Consultation and Coordination With Indian Tribal Governments

This proposed rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (59 FR 22951, November 9, 2000).

Executive Order 13132 Federalism

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.

Executive Order 13045 Protection of Children From Environmental Health and Safety Risks

This proposed rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

National Technology Transfer Advancement Act

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the

requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply.

Paperwork Reduction Act

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

List of Subjects

40 CFR Part 52

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

40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Dated: July 21, 2005.

Bharat Mathur,

Acting Regional Administrator, Region 5.

[FR Doc. 05–15058 Filed 7–28–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[OAR–2003–0048; FRL–7943–1]

RIN 2060–AN05

National Emission Standards for Hazardous Air Pollutants: Plywood and Composite Wood Products; List of Hazardous Air Pollutants, Lesser Quantity Designations, Source Category List; Reconsideration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of reconsideration of final rule; request for public comment; notice of public hearing.

SUMMARY: On July 30, 2004, EPA promulgated national emission standards for hazardous air pollutants (NESHAP) for the plywood and composite wood products (PCWP) source category. The Administrator subsequently received a petition for reconsideration of certain provisions in the final rule. By a letter dated December 6, 2004, the Assistant Administrator for Air and Radiation granted the petition for reconsideration, explaining that we would publish a notice in the **Federal Register** to respond to the petition. We are issuing that notice and requesting comment on the approach used to delist a low-risk subcategory of PCWP affected sources, as outlined in the final rule, and on an issue related to the final rule's start-up, shutdown, and malfunction (SSM) provisions. We are not requesting comments on any other provisions of the final PCWP rule or any other rule. The petitioners also requested that we stay the effectiveness of the risk-based provisions of the final rule, pending reconsideration of those provisions. As stated in the December 6, 2004 letter, we are declining to take that action at the present time.

DATES: *Comments.* Comments must be received on or before September 12, 2005.

Public Hearing. If anyone contacts EPA requesting to speak at a public hearing by August 8, 2005, a public hearing will be held on August 15, 2005. For further information on the public hearing and requests to speak, see the **ADDRESSES** section of this preamble.

ADDRESSES: *Comments.* Submit your comments, identified by Docket ID No. OAR–2003–0048 (Legacy Docket ID No. A–98–44) by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Agency Web Site: http://www.epa.gov/edocket.* EDOCKET, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.
- *E-mail: a-and-r-docket@epa.gov.*
- *Fax:* (202) 566–1741.
- *Mail:* Air and Radiation Docket and Information Center, EPA, Mailcode: 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.
- *Hand Delivery:* Air and Radiation Docket and Information Center, EPA, Room B102, 1301 Constitution Ave., NW., Washington, DC. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions. Direct your comments to Docket ID No. OAR–2003–0048 (Legacy Docket ID No. A–98–44). EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.epa.gov/edocket*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through EDOCKET, regulations.gov, or e-mail. EPA EDOCKET and the Federal regulations.gov Web sites are ''anonymous access'' systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through EDOCKET or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Public Hearing. If a public hearing is held, it will be held on August 15, 2005 at EPA's RTP campus, Research Triangle Park, NC or an alternative site nearby. Persons interested in attending the hearing or wishing to present oral testimony should notify Ms. Mary Tom Kissell at least 2 days in advance of the public hearing (see **FOR FURTHER INFORMATION CONTACT** section of this preamble). The public hearing will provide interested parties the opportunity to present data, views, or arguments concerning this notice.

Docket. EPA has established an official public docket for today's notice, including both Docket ID No. OAR–2003–0048 and Legacy Docket ID No. A–98–44. The official public docket consists of the documents specifically referenced in today's notice, any public comments received, and other information related to the notice. All items may not be listed under both docket numbers, so interested parties should inspect both docket numbers to ensure that they have received all materials relevant to today's notice. Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Air and Radiation Docket and Information Center, EPA, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal

holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket and Information Center is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: For general and technical information and questions about the public hearing, contact Ms. Mary Tom Kissell, Waste and Chemical Processes Group, Emission Standards Division, Mailcode: C439–03, EPA, Research Triangle Park, NC 27711; telephone number: (919) 541–4516; fax number: (919) 541–0246; e-mail address: *kissell.mary@epa.gov*.

SUPPLEMENTARY INFORMATION:

Outline

The information presented in this preamble is organized as follows:

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A. Does This Reconsideration Notice Apply to Me?
B. How do I Submit CBI?
C. How do I Obtain a Copy of This Document and Other Related Information?
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H. Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer and Advancement Act

I. General Information

A. Does This Reconsideration Notice Apply to Me?

Categories and entities potentially affected by today's notice include:

Category	SIC code [a]	NAICS code [b]	Examples of regulated entities
Industry	2421	321999	Sawmills with lumber kilns.
	2435	321211	Hardwood plywood and veneer plants.
	2436	321212	Softwood plywood and veneer plants.
	2493	321219	Reconstituted wood products plants (particleboard, medium density fiberboard, hardboard, fiberboard, and oriented strandboard plants).
	2439	321213	Structural wood members, not elsewhere classified (engineered wood products plants).

[a] Standard Industrial Classification.
[b] North American Industrial Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by today's notice. To determine whether your facility is affected by today's notice, you should examine the applicability criteria in section 63.2231 of the final rule. If you have questions regarding the applicability of today's notice to a particular entity, consult Ms. Mary Tom Kissell listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. How Do I Submit CBI?

Do not submit this information to EPA through EDOCKET, regulations.gov, or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

C. How Do I Obtain a Copy of This Document and Other Related Information?

In addition to being available in the docket, an electronic copy of today's notice also will be available on the World Wide Web (WWW) through EPA's Technology Transfer Network (TTN). Following the Administrator's signature, a copy of this notice will be posted on the TTN's policy and guidance page for newly proposed rules at *http://www.epa.gov/ttn/oarpg*. The TTN provides information and technology exchange in various areas of air pollution control.

II. Background

We proposed NESHAP for the PCWP source category on January 9, 2003 (68 FR 1276). The preamble for the proposed rule described the rationale for the proposed rule and solicited public comments. The preamble for the proposed rule requested comment on how and whether we should incorporate risk-based approaches into the final rule to avoid imposition of regulatory controls on facilities that pose little risk to public health and the environment (see 68 FR 1296–1302, January 9, 2003).

Fifty-seven interested parties submitted comments on the proposed rule during the comment period. Comments were submitted by industry trade associations, PCWP companies, State regulatory agencies, local government agencies, and environmental groups. We summarized major public comments on the proposed rule, along with our responses to those comments, in the preamble to the final rule and in the background information document. We summarized major public comments on the proposed risk-based approaches, along with our responses to those comments, in the preamble to the final rule (see 69 FR 45983–46005, July 30, 2004).

The final rule (subpart DDDD in 40 CFR part 63) was published on July 30, 2004 (69 FR 45944). We adopted a risk-based approach in the final rule by establishing and delisting a low-risk subcategory of PCWP affected sources based on our authority under sections 112(c)(1) and (9) of the Clean Air Act (CAA). The methodology and criteria for PCWP affected sources to use in demonstrating that they are part of the delisted low-risk subcategory were promulgated in appendix B to subpart DDDD of 40 CFR 63 (see 69 FR 46040–46045, July 30, 2004). A description of the procedure for determining that an affected source is part of the low-risk subcategory was provided in the preamble to the final rule (see 69 FR 45953–45955, July 30, 2004).

Affected sources demonstrating that they are part of the delisted low-risk subcategory are not subject to the CAA

section 112(d) maximum achievable control technology (MACT) emission limitations, operating requirements, and work practice requirements in the final PCWP rule (subpart DDDD of CFR part 63), or to any other requirements of CAA section 112. For an affected source to be part of the delisted low-risk subcategory, it must have a low-risk demonstration approved by EPA. It must then have federally enforceable conditions reflecting the parameters used in the EPA-approved demonstration incorporated into its title V permit to ensure that it remains low-risk. EPA conducted low-risk demonstrations for eight facilities, and EPA will not require further demonstration from them before they become part of the delisted low-risk subcategory. These facilities will, however, need to obtain title V permit terms reflecting their status in order to maintain their low-risk eligibility.

III. Why Are We Taking This Action?

Following promulgation of the PCWP rule, the Administrator received a petition for reconsideration filed by the Natural Resources Defense Council (NRDC) and Environmental Integrity Project (EIP) pursuant to section 307(d)(7)(B) of the CAA.[1] The petition requested reconsideration of nine elements of the final rule: (1) Risk assessment methodology; (2) background pollution and co-located emission sources; (3) the dose-response value used for formaldehyde; (4) costs and benefits of establishing a low-risk subcategory; (5) ecological risk; (6) legal basis for the risk-based approach; (7) MACT compliance date for affected sources previously qualifying for the low-risk subcategory; (8) SSM provisions; and (9) title V implementation mechanism for the risk-based approach. With the exception of the petitioners' issue with the SSM provisions in subpart DDDD of 40 CFR part 63, all of the petitioners' issues relate to the risk-based approach adopted in the final rule. The petitioners stated that reconsideration of the above issues is appropriate because they claimed that the issues could not have been practicably raised during the public comment period. The petition for reconsideration also requested a stay of the effectiveness of the risk-based provisions.

In a letter dated December 6, 2004, EPA granted NRDC's and EIP's petition for reconsideration, indicating that the Agency would conduct rulemaking to respond to the petition. In that letter, we also declined the petitioners' request that we take action to stay the effectiveness of the risk-based provisions.

Following signature of the final rule, PCWP industry representatives raised several issues related to implementation of the requirements in appendix B to subpart DDDD, including the emissions testing procedures, stack height calculations, and permitting requirements required to be used by facilities demonstrating eligibility for the low-risk subcategory. Industry stakeholders and State regulatory agencies also expressed concern about a few narrow issues related to subpart DDDD of 40 CFR part 63. We are proposing amendments to the final rule in a separate **Federal Register** action to address these issues, correct any other inconsistencies that were discovered following promulgation, and clarify some common applicability questions. Because the issues raised by the petitioners broadly address the risk provisions, the proposed amendments are relevant to some of the petitioners' issues.

The purpose of today's notice is to request comments on the nine issues in the petition for reconsideration. Stakeholders who would like for us to consider comments relevant to today's reconsideration that were previously submitted, may reference the comments instead of resubmitting them. To reference previously submitted comments, identify the relevant docket entry numbers and page numbers.

IV. What Issues Relevant to the Low-Risk Subcategory Were Raised in the Petition for Reconsideration?

In their petition for reconsideration (Docket ID No. OAR–2003–0048), NRDC and EIP requested that several of the risk-based provisions adopted in the final PCWP rule be reconsidered. The petitioners contend that there was inadequate opportunity for public comment on the issues prior to promulgation of the final rule and that the issues are of central relevance to the outcome of the rule. We are offering another opportunity for public comment on the risk-based approach included in the final PCWP rule and on the approach included in appendix B to subpart DDDD. The following text lists the issues raised by the petitioners for which we are requesting comment.

1. Risk Assessment Methodology

The petitioners believe that EPA's description of the low-risk demonstration procedures in the preamble to the proposed PCWP rule did not provide key details that would have allowed the public to fully comment on EPA's intended approach. The petitioners noted that the final PCWP rule contains a new appendix (appendix B to subpart DDDD).

The petitioners commented on: (1) The methodology for calculating the average stack height; (2) the assignment of zero to any hazardous air pollutants (HAP) for which EPA has yet to assign a unit risk estimate[2] (URE); (3) the treatment of all PCWP plants as though their local topography and climate are identical (*e.g.*, factors such as prevailing winds are not considered); (4) the estimate of cancer risks for children; (5) the use of nearest residence rather than exposed individual, possibly closer to the facility, including workers at PCWP facilities; and (6) the facility's ability to choose which criteria to use in their site-specific risk demonstrations.

The approach we used to evaluate potential risks from PCWP sources and to develop the risk assessment methodology outlined in appendix B to subpart DDDD is discussed in the preamble to the final rule (69 FR 45953–45955 and 45983–46005, respectively), in the preamble to the proposed rule (68 FR 1297–1301), and in the supporting documentation (Docket ID No. OAR–2003–0048). Our approach to selecting the HAP listed in table 1 to appendix B to subpart DDDD is described in the preamble to the final rule at 69 FR 45991–45997.

2. Background Pollution and Co-Located Emission Sources

The petitioners stated that the final rule does not require consideration of risks from other HAP sources located at the same plant site (co-located sources) or risks from background ambient HAP concentrations. Our final rule addressed background exposures (including co-located exposures) and hazard index in the preamble to the final rule (69 FR

[1] In addition to the petition for reconsideration, four petitions for judicial review of the final PCWP rule were filed with the U.S. Court of Appeals for the District of Columbia by NRDC and Sierra Club (No. 04–1323, D.C. Cir.), EIP (No. 04–1235, D.C. Cir.), Louisiana-Pacific Corporation (No. 04–1328, D.C. Cir.), and Norbord Incorporated (No. 04–1329, D.C. Cir.). The four cases have been consolidated. In addition, the following parties have filed as interveners: American Forest and Paper Association (AF&PA), Hood Industries, Scotch Plywood, Coastal Lumber Company, Composite Panel Association, APA—The Engineered Wood Association, American Furniture Manufacturers Association, NRDC, Sierra Club, and EIP. Finally, the Formaldehyde Council, Inc. and the State and Territorial Air Pollution Program Administrators and Association of Local Air Pollution Control Officials (STAPPA/ALAPCO) are participating in the litigation as amicus curiae.

[2] A unit risk estimate is defined as the upper-bound excess lifetime cancer risk estimated to result from continuous exposure to an agent at a concentration of 1 microgram per cubic meter (μg/m3) in air.

45997–46001) and in the preamble to the proposed rule (68 FR 1298–1300).

3. Dose-Response Value Used for Formaldehyde and Other HAP

The petitioners stated that the preamble to the proposed rule indicated that EPA would use the formaldehyde URE (1.3×10^{-5} 1/(ug/m^3)) from the Integrated Risk Information System (IRIS), the agency's toxicological database, to calculate whether or not a given source is low-risk. However, the final rule relied on a lower (less potent) URE (5.5×10^{-9} 1/(ug/m^3)) derived by the CIIT Centers for Health Research without offering an opportunity for public comment on the CIIT model. The petitioners asserted that the CIIT evaluation is limited in a number of important ways and that recent studies link formaldehyde to cancers other than those evaluated by CIIT.

In the preamble to the proposed PCWP rule, we stated that recent reassessments of formaldehyde carcinogenicity have been conducted by the World Health Organization and the Canadian Ministry of Health. These reassessments are based on the approach derived by CIIT. We also stated that the dose-response assessment for formaldehyde was undergoing revision by EPA (see 68 FR 1300). EPA is currently reassessing the scientific information on formaldehyde and will consider all of the available studies, including the CIIT and other studies to which the petitioners referred. The reasoning for our selection of the CIIT value for formaldehyde at the time of the final rule is discussed in the preamble to the final rule at 69 FR 45993–45994. Dose-response relationships are discussed in the preamble to the proposed rule at 68 FR 1300.

Given that the state of science with respect to dose-response values is constantly evolving, we are continuously monitoring the dose-response values for HAP emitted by the PCWP industry in addition to the 13 HAP listed in table 1 to appendix B to subpart DDDD. We are continuing to gather and review new information regarding formaldehyde toxicity. Development of an IRIS assessment for propionaldehyde is underway.

The final rule addresses changes in potency values. Section 13 in appendix B to subpart DDDD requires facilities to consider changes in dose-response values should they become more potent. Therefore, if the IRIS formaldehyde URE, when updated, is more potent than the CIIT value, PCWP facilities would be required to demonstrate that they are low-risk using the revised IRIS value.

If HAP emitted by PCWP sources, other than the 13 specified in appendix B to subpart DDDD, become significant contributors to risk, we reserve the right to amend the list of HAP that must be included in the low risk determinations. Such an amendment to appendix B to subpart DDDD would specify methods for PCWP facilities in the low-risk subcategory to determine emissions of the HAP and deadlines for submittal of revised low-risk demonstrations incorporating the effects of the HAP.

4. Costs and Benefits of the Low-Risk Subcategory

The petitioners questioned the basis of EPA's cost and benefit analyses. Our estimates of the costs and benefits of the final rule are presented in the preamble to the final rule (69 FR 45955–45958) and the supporting documentation (Docket ID No. OAR–2003–0048), ''Cost, Environmental, and Energy Impacts Associated with Facilities Potentially Eligible for the Delisted Low-Risk Subcategory of Plywood and Composite Wood Products Facilities;'' ''Regulatory Impact Analysis for the Plywood and Composite Wood Products NESHAP;'' ''Regulatory Impact Analysis of the Final Plywood and Composite Wood Products NESHAP; Part 2 of 2.'')

5. Ecological Risk

The petitioners stated that the proposal preamble gave few details about how a low-risk subcategory delisting action would be accomplished and did not discuss how ecological risks would be considered. Our analysis of ecological effects is discussed the preamble to the final rule (69 FR 45998–45999) and in supporting documentation (Docket ID No. OAR–2003–0048). In response to the petitioners' concerns, we have prepared and placed in the docket additional supporting information titled, ''Additional Explanation of the Ecological Risk Assessment for Members of the Plywood and Composite Wood Products (PCWP) Source Category—Appendix B''.

6. Legal Basis

The petitioners objected to the legal rationale for the low-risk subcategory provided in the preamble to the final rule. The petitioners stated that the risk-based exemptions contravene the statutory language, structure and legislative history of the 1990 CAA Amendments. The preamble to the final PCWP rule presents the legal rationale for our inclusion of a delisted low-risk subcategory of PCWP affected sources in the final rule (see 69 FR 45984–45991, July 30, 2004) and in the preamble to the proposed rule at 68 FR 1297–1298. We request comment on the legal basis for the risk-based option included in the final rule. Because our approach in the final rule relied upon the authority in section 112(c)(9) of the CAA, we are not asking for comments relating to legal authority under the CAA section 112(d)(4) or *de minimis* principles (see 69 FR 45986–45987).

7. MACT Compliance Date for Affected Sources Previously Qualifying for the Low-Risk Subcategory

The petitioners objected to allowing facilities in the low-risk subcategory 3 years to come into compliance with the MACT standard if they are no longer low risk due to factors beyond their control. We discuss the compliance date for sources that become subject to the MACT standards because they no longer are part of the low-risk subcategory in the preamble to the final rule (69 FR 45955) and in section 13(b) of appendix B to subpart DDDD. As the petitioners noted, under EPA MACT rules, sources normally have 3 years following a rule's effective date to comply with a MACT standard to which they are subject. Under the final rule, sources that are no longer part of the low-risk subcategory because of factors within their control (*e.g.*, process changes that increase HAP emissions) must comply with MACT immediately. Sources no longer part of the low-risk subcategory because of factors outside of their control (*e.g.*, changes in dose-response values or population shifts) are allowed 3 years from the date they begin operating outside the low-risk subcategory to comply with MACT.

8. Title V Implementation Mechanism

The petitioners contended that the PCWP proposal did not provide notice of the title V implementation approach for the CAA section 112(c)(9) low-risk subcategory adopted in the final rule. The petitioners also contended that the way we use title V to implement the low-risk subcategory is inappropriate and unsupportable for several reasons. Use of title V permits for the implementation of the low-risk subcategory is discussed throughout the preamble and final rule (69 FR 46002–46005).

V. What Issues Relevant to the Requirements for Periods of Startup, Shutdown, and Malfunction (SSM) Were Raised in the Petition for Reconsideration?

The petitioners stated that EPA replaced the SSM approach from the

proposed PCWP rule with an approach based on the amended General Provisions issued on May 30, 2003, following the close of the public comment period on the PCWP proposal. Thus, the petitioners claimed that the public had no opportunity to comment on the revised SSM approach in the context of the PCWP rule, which, according to the petitioners, does not allow public access to SSM plans. In addition, the petitioners noted that EPA removed the text ''you must minimize emissions to the greatest extent possible'' when combining proposed sections 63.2250(a) and (d) for the final PCWP rule.

Section 63.2250 of final PCWP rule references the amended sections of the General Provisions regarding public access to SSM plans (section 63.6(e)(3) of the final rule) and general duty to minimize emissions (section 63.6(e)(1)(i) of the final rule). The statement ''you must minimize emissions to the greatest extent possible'' was removed from the final PCWP rule because different language is included in the amended General Provisions. As stated in the preamble to the final PCWP rule (69 FR 45983), the General Provisions are referenced directly in the PCWP rule to avoid confusion and promote consistency. Although the amendments to the General Provisions are the subject of ongoing litigation and agency reconsideration, the requirements promulgated on May 30, 2003, apply to the final PCWP rule. Therefore, in today's PCWP notice of reconsideration, we seek comments only on the application of the General Provisions' SSM provisions to PCWP sources and on SSM issues specific to the PCWP industry.

VI. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), EPA must determine whether the regulatory action is ''significant'' and, therefore, subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The Executive Order defines a ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlement, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that today's notice of reconsideration is a ''significant regulatory action'' because it raises novel legal or policy issues. As such, the notice was submitted to OMB for review under Executive Order 12866. Changes made in response to OMB suggestions or recommendations are documented in the public record (see **ADDRESSES** section of this preamble).

B. Paperwork Reduction Act

This action does not impose any new information collection burden. We are not proposing any new paperwork (*e.g.*, monitoring, reporting, recordkeeping) as part of today's notice. With this action we are seeking additional comments on some of the provisions finalized in the July 2004 **Federal Register** Notice (69 FR 45943). However, OMB has previously approved the information collection requirements contained in the existing regulations (40 CFR part 63) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and has assigned OMB control number 2060–0552, EPA ICR number 1984.02. A copy of the OMB approved Information Collection Request (ICR) may be obtained from Susan Auby, Collection Strategies Division; EPA (2822T); 1200 Pennsylvania Ave., NW., Washington, DC 20460 or by calling (202) 566–1672.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

For purposes of assessing the impacts of today's notice of reconsideration on small entities, a small entity is defined as: (1) A small business having no more than 500 to 750 employees, depending on the business' NAICS code; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and that is not dominant in its field.

After considering the economic impacts of today's notice of reconsideration on small entities, I certify that the notice will not have a significant economic impact on a substantial number of small entities. EPA has determined that none of the small entities will experience a significant impact because the notice imposes no additional regulatory requirements on owners or operators of affected sources.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable

number of regulatory alternatives and adopt the least costly, most cost-effective, or least-burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least-costly, most cost-effective, or least-burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed, under section 203 of the UMRA, a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA's regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that today's notice of reconsideration does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. Although the final rule had annualized costs estimated to range from $74 to $140 million (depending on the number of facilities eventually demonstrating eligibility for the low-risk subcategory), today's notice does not add new requirements that would increase this cost. Thus, today's notice of reconsideration is not subject to the requirements of sections 202 and 205 of the UMRA. In addition, EPA has determined that today's notice does not significantly or uniquely affect small governments because it contains no requirements that apply to such governments or impose obligations upon them. Therefore, today's notice of reconsideration is not subject to section 203 of the UMRA.

E. Executive Order 13132: Federalism

Executive Order 13132 (64 FR 43255, August 10, 1999) requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' are defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

Today's notice of reconsideration does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. None of the affected facilities are owned or operated by State governments, and the requirements discussed in today's notice will not supersede State regulations that are more stringent. Thus, Executive Order 13132 does not apply to today's notice of reconsideration.

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

Executive Order 13175 (65 FR 67249, November 6, 2000) requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' are defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.''

Today's notice of reconsideration does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. No affected facilities are owned or operated by Indian tribal governments. Thus, Executive Order 13175 does not apply to today's notice of reconsideration.

G. Executive Order 13045: Protection of Children from Environmental Health and Safety Risks

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be ''economically significant,'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, EPA must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by EPA.

Today's notice is not subject to the Executive Order because EPA does not believe that the environmental health or safety risks associated with the emissions addressed by the proposed amendments present a disproportionate risk to children. The noncancer human health toxicity values we used in our analysis at promulgation (*e.g.*, reference concentrations) are protective of sensitive subpopulations, including children. In addition, for purposes of this rulemaking, EPA has not determined that any of the pollutants in question has the potential for a disproportionate impact on predicted cancer risks due to early-life exposure.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

Executive Order 13211 (66 FR 28355, May 22, 2001) provides that agencies shall prepare and submit to the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, a Statement of Energy Effects for certain actions identified as ''significant energy actions.'' Section 4(b) of Executive Order 13211 defines ''significant energy actions'' as ''any action by an agency (normally published in the **Federal Register**) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking: (1)(i) that is a significant regulatory action under Executive Order 12866 or any successor order, and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action.''

Today's notice of reconsideration is not a ''significant energy action'' as defined in Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Further, we have concluded that today's notice of reconsideration is not likely to have any adverse energy effects.

I. National Technology Transfer and Advancement Act

As noted in the final rule, section 12(d) of the National Technology Transfer and Advancement Act

(NTTAA) of 1995 (Public Law No. 104–113; 15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in their regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impracticable. Voluntary consensus standards are technical standards (*e.g.*, material specifications, test methods, sampling procedures, business practices) developed or adopted by one or more voluntary consensus bodies. The NTTAA requires EPA to provide Congress, through the OMB, with explanations when EPA decides not to use available and applicable voluntary consensus standards.

During the development of the final rule, EPA searched for voluntary consensus standards that might be applicable. The search identified two voluntary consensus standards that were considered practical alternatives to the specified EPA test methods. An assessment of these and other voluntary consensus standards is presented in the preamble to the final rule (see 69 FR 46010, July 30, 2004). Today's notice of reconsideration does not propose the use of any additional technical standards beyond those cited in the final rule. Therefore, EPA is not considering the use of any additional voluntary consensus standards for this notice.

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: July 18, 2005.

Stephen L. Johnson,

Administrator.

[FR Doc. 05–14533 Filed 7–28–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–7945–8]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of intent to delete the North Sea Municipal Landfill Superfund Site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA) Region 2 is issuing this notice of intent to delete the North Sea Municipal Landfill Superfund Site (Site), located in Southampton, New York from the National Priorities List (NPL) and requests public comment on this action. The NPL is Appendix B of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR part 300, which EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended. The EPA and the New York State Department of Environmental Conservation, have determined that responsible parties have implemented all appropriate response actions required. In the ''Rules and Regulations'' Section of today's **Federal Register**, we are publishing a direct final deletion of the North Sea Municipal Landfill Superfund Site without prior notice of this action because we view this as a noncontroversial revision and anticipate no significant adverse comment. We have explained our reasons for this deletion in the preamble to the direct final deletion. If we receive no significant adverse comment(s) on this notice of intent to delete or the direct final notice of deletion, we will not take further action on this notice of intent to delete. If we receive significant adverse comment(s), we will withdraw the direct final notice of deletion and it will not take effect. We will, as appropriate, address all public comments. If, after evaluating public comments, EPA decides to proceed with deletion, we will do so in a subsequent final deletion notice based on this notice of intent to delete. We will not institute a second comment period on this notice of intent to delete. Any parties interested in commenting must do so at this time. For additional information, see the direct final notice of deletion which is located in the Rules section of this **Federal Register**.

DATES: Comments concerning this Site must be received by August 29, 2005.

ADDRESSES: Written comments should be addressed to: Caroline Kwan, Remedial Project Manager, U.S. Environmental Protection Agency, Region II, 290 Broadway, 20th Floor, New York, New York 10007–1866.

FOR FURTHER INFORMATION CONTACT: Ms. Caroline Kwan, Remedial Project Manager, U.S. Environmental Protection Agency, 290 Broadway, 20th floor, New York, NY 10007–1866, (212) 637–4275; Fax Number (212) 637–4284; email address: *kwan.caroline@epa.gov*.

Information Repositories: Comprehensive information about the Site is available for viewing and copying at the Site information repositories located at: U.S. Environmental Protection Agency, Region 2, 290 Broadway, Superfund Record Center, Room 1828, New York, NY 10007–1866. Hours: Monday to Friday from 9 a.m. to 5 p.m., Telephone No. (212) 637–4308, Southampton College, Reference Department, 239 Montauk Highway, Southampton, New York 11968–4100, Hours: Monday to Friday till August 12, 2005 from 9 a.m. to 6 p.m., Closed from August 13 till September 5, reopening on September 6, Monday to Thursday from 10 a.m. to 9 p.m., Saturday: 12 p.m. to 5 p.m., Telephone No. 631–287–8379, The Rogers Memorial Library (Reference Department), 91 Coopers Farms Road, Southampton, New York 11968–4002, Hours: Monday to Thursday from 10 a.m. to 9 p.m., Friday: 10 a.m. to 7 p.m., Saturday: 10 a.m. to 5 p.m., Sunday: 1 p.m. to 5 p.m., Telephone No. (632) 283–0774.

SUPPLEMENTARY INFORMATION: For additional information, see the Direct Final Deletion which is located in the Rules section of this **Federal Register**.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9675; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

Dated: July 22, 2005.

George Pavlou,

Acting Regional Administrator, USEPA, Region 2.

[FR Doc. 05–15043 Filed 7–28–05; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF ENERGY

48 CFR Parts 909, 913, and 970

RIN 1991–AB62

Acquisition Regulation: Technical Revisions or Amendments To Update Clauses

AGENCY: Department of Energy.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Energy (DOE) is proposing to amend its acquisition regulation to remove and add specified clauses, and revise certain

other clauses, currently contained in the Department of Energy Acquisition Regulation (DEAR). This rule also proposes to revise associated regulatory coverage, as necessary.

DATES: Written comments (three copies) on the proposed rulemaking must be received on or before August 29, 2005.

ADDRESSES: This notice of proposed rulemaking is available and comments may be submitted online at *http://www.Regulations.gov*. Comments may be submitted by e-mail to *Michael.fischetti@hq.doe.gov*. Comments may be mailed to: Michael P. Fischetti, ME–61, U.S. Department of Energy, Office of Procurement and Assistance Management, 1000 Independence Avenue, SW., Washington, DC 20585.

Comments by e-mail are encouraged.

FOR FURTHER INFORMATION CONTACT: Michael Fischetti at (202) 287–1304 or *Michael.fischetti@hq.doe.gov*.

SUPPLEMENTARY INFORMATION

I. Background
II. Section-by-Section Analysis
III. Procedural Requirements
A. Review Under Executive Order 12866
B. Review Under Executive Order 12988
C. Review Under the Regulatory Flexibility Act
D. Review Under the Paperwork Reduction Act
E. Review Under the National Environmental Policy Act
F. Review Under Executive Order 13132
G. Review Under the Unfunded Mandates Reform Act of 1995
H. Review Under the Treasury and General Government Appropriations Act, 1999
I. Review Under Executive Order 13211
J. Review Under the Treasury and General Government Appropriations Act, 2001
K. Approval by the Office of the Secretary of Energy

I. Background

The purpose of this rulemaking is to update various clauses within 48 CFR chapter 9 to specify contractor responsibility in the areas of performance, work authorization, and subcontract flow down provisions.

This rulemaking would modify current guidance contained in DEAR clauses concerning Debarment; Fast Payment Procedures; Laws, Regulations, and Directives; Work Authorization; Integration of Environment, Safety, and Health into Work Planning and Execution; and Facilities Management.

II. Section-by-Section Analysis

The Department of Energy proposes to amend the regulation as follows:

1. DEAR 909.406, Debarment, is proposed to be revised to permit a debarring official to debar a contractor, based upon a preponderance of the evidence, for falsely certifying or otherwise representing itself as a small, small disadvantaged, women- or veteran-owned, or similar concern.

2. DEAR subpart 913.4 Fast Payment Procedure is proposed to be deleted in its entirety. DEAR 913.402 currently prohibits the use of fast payment procedures. Upon review of the Department's policy and the Federal Acquisition Regulation (FAR), DOE has determined that fast payment procedures could be used by DOE and that FAR coverage in subpart 13.4, Fast Payment Procedure, is adequate to protect the Department's interests. Removal of this section would permit DOE to use fast payment procedures under FAR 13.4.

3. DEAR 970.5204–2, Laws, Regulations, and DOE Directives, is proposed to be revised by adding the following three sentences to the end of paragraph (e): ''Unless the contract specifically instructs the contractor regarding subcontract flow-down, the contractor shall be responsible for determining the appropriate implementation of the requirements, including the extent to, and manner in which, requirements should be reflected in subcontracts. In doing so, the contractor retains the same responsibility for performance and cost management that it has for all contract efforts. Specifically, the contractor shall not unnecessarily or imprudently flow down requirements to subcontracts and shall only incur costs that would be incurred by a prudent person in the conduct of a competitive business.'' This language is intended to emphasize the contractor's responsibility in effective cost management in flowing down prime contract requirements to its subcontractors.

4. DEAR 970.5211–1, Work Authorization, is proposed to be added, with prescriptive language in DEAR 970.1170–1 and a contract clause instruction in DEAR 970.1170–2. This clause incorporates requirements that are presently located in the contractor's requirements document attached to DOE Directive DOE O 412.1, Work Authorization System. The DOE O 412.1 currently establishes an assignment and control process for budget of estimated costs, description of work, and schedule of performance for individual work activities performed by designated contractors within the contract scope of work. The proposed clause would eliminate the need for a contractor requirements document by establishing the requirements as a DEAR clause.

5. DEAR 970.5223–1, Integration of Environment, Safety, and Health (ES&H) specifies contractor requirements pertaining to ES&H. It is proposed to be modified by making some editorial changes to paragraphs (d) and (e) and adding the following three sentences to paragraph (h): ''Unless the contract specifically instructs the contractor regarding subcontract flow-down, the contractor shall be responsible for determining the appropriate implementation of the requirements, including the extent to which, and manner in which, requirements should be reflected in subcontracts. In doing so, the contractor retains the same responsibility for performance and cost management that it has for all contract efforts. Specifically, the contractor shall not unnecessarily or imprudently flow down requirements to subcontracts and shall only incur costs that would be incurred by a prudent person in the conduct of a competitive business.'' This language is intended to emphasize the contractor's responsibility in effective cost management in flowing down prime contract requirements to its subcontractors.

6. DEAR 970.5237–2, Facilities Management, and the corresponding instruction at DEAR 970.37, Facilities Management Contracting, are proposed to be deleted. They currently provide guidance concerning site development planning, design criteria, energy management, and subcontract requirements. DOE directives, such as DOE O 430.1A, Life Cycle Asset Management, already provide sufficient guidance.

III. Procedural Requirements

A. Review Under Executive Order 12866

Today's regulatory action has been determined not to be a ''significant regulatory action'' under Executive Order 12866, ''Regulatory Planning and Review,'' (58 FR 51735, October 4, 1993). Accordingly, this rulemaking is not subject to review under that Executive Order by the Office of Information and Regulatory Affairs (OIRA) of the Office of Management and Budget (OMB).

B. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' 61 FR 4729 (February 7, 1996), imposes on Executive agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification

and burden reduction. With regard to the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, these proposed regulations meet the relevant standards of Executive Order 12988.

C. Review Under the Regulatory Flexibility Act

This rulemaking has been reviewed under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, which requires preparation of an initial regulatory flexibility analysis for any rule that must be proposed for public comment and that is likely to have significant economic impact on a substantial number of small entities. The rulemaking would not have a significant economic impact on small entities. While rule requirements may flow down to subcontractors in certain circumstances, the costs of compliance are not estimated to be large and, in any event, would be reimbursable expenses under the contract or subcontract.

Accordingly, DOE certifies that this rulemaking would not have a significant economic impact on a substantial number of small entities, and, therefore, no regulatory flexibility analysis has been prepared.

D. Review Under the Paperwork Reduction Act

Information collection or record keeping requirements contained in this rulemaking have been previously cleared under Office of Management and Budget paperwork clearance package Number 1910–0300. There are no new burdens imposed by this rulemaking.

E. Review Under the National Environmental Policy Act

DOE has concluded that promulgation of this proposed rule falls into a class of actions which would not individually or cumulatively have significant impact on the human environment, as determined by DOE's regulations (10 CFR part 1021, subpart D) implementing the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*). Specifically, this proposed rule is categorically excluded from NEPA review because the amendments to the DEAR would be strictly procedural (categorical exclusion A6). Therefore, this proposed rule does not require an environmental impact statement or environmental assessment pursuant to NEPA.

F. Review Under Executive Order 13132

Executive Order 13132 (64 FR 43255, August 4, 1999) imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. Agencies are required to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and carefully assess the necessity for such actions. The Executive Order does require agencies to have an accountability process to ensure meaningful and timely input by state and local officials in the development of regulatory policies that have federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations (65 FR 13735). DOE has examined today's proposed rule and has determined that it does not preempt State law and does not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. No further action is required by Executive Order 13132.

G. Review Under the Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) generally requires a Federal agency to perform a written assessment of costs and benefits of any rule imposing a Federal Mandate with costs to State, local or tribal governments, or to the private sector, of $100 million or more. This proposed rulemaking would only affect private sector entities, and the impact is less than $100 million.

H. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277), requires Federal agencies to issue a Family Policymaking Assessment for any rulemaking or policy that may affect family well-being. This rulemaking will have no impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under Executive Order 13211

Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use (66 FR 28355, May 22, 2001), requires Federal agencies to prepare and submit to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget, a Statement of Energy Effects for any proposed significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgates or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy, or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use. Today's rule is not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects.

J. Review Under the Treasury and General Government Appropriations Act, 2001

The Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516, note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (February 22, 2002), and DOE's guidelines were published at 67 FR 62446 (October 7, 2002). DOE has reviewed today's notice under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Approval by the Office of the Secretary of Energy

Issuance of this proposed rule has been approved by the Office of the Secretary of Energy.

List of Subjects in 48 CFR Parts 909, 913, and 970

Government procurement.

Issued in Washington, DC on July 20, 2005.

Richard H. Hopf,

Director, Office of Procurement and Assistance Management, Office of Management Budget and Evaluation/Chief Financial Officer.

Robert C. Braden,

Director, Office of Acquisition and Supply Management, National Nuclear Security Administration.

For the reasons set out in the preamble, Chapter 9 of Title 48 of the Code of Federal Regulations is proposed to be amended as set forth below.

PART 909—CONTRACTOR QUALIFICATIONS

1. The authority citation for part 909 is revised to read as follows:

Authority: 42 U.S.C. 2201, 2282a, 2282b, 2282c, 7101 *et seq.*; 41 U.S.C. 418(b); 50 U.S.C. 2401 *et seq.*

909.406 Debarment.

2. In section 909.406–2, the section heading is revised and paragraph (e) is added to read as follows:

909.406–2 Causes for debarment. (DOE coverage—paragraphs (c) through (e)).

* * * * *

(e) The debarring official may debar a contractor, established by a preponderance of the evidence, such as an SBA determination, for falsely certifying itself as a:

(1) Small Business Concern;

(2) Small Disadvantaged Business Concern;

(3) Women-Owned Small Business Concern;

(4) Veteran-Owned Small Business Concern;

(5) Service-Disabled Veteran-Owned Small Business Concern;

(6) Historically Underutilized Business Zone Concern.

PART 913—SIMPLIFIED ACQUISITION PROCEDURES

3. The authority citation for part 913 continues to read as follows:

Authority: 42 U.S.C. 7101 *et seq;* 41 U.S.C. 418(b); 50 U.S.C. 2401 *et seq.*

Subpart 913.4—[Removed]

4. Subpart 913.4 is removed.

PART 970—DOE MANAGEMENT AND OPERATING CONTRACTS

5. The authority citation for part 970 continue to read as follows:

Authority: 42 U.S.C. 2201, 2282b, 2282c, 7101 *et seq.*; 41 U.S.C. 418b; 50 U.S.C. 2401 *et seq.*

Subpart 970.11—Describing Agency Needs

6. Sections 970.1170, 970.1170–1, and 970.1170–2 are added to read as follows:

970.1170 Work authorization.

970.1170–1 Policy.

Each contract for the management and operation of a DOE site or facility, and other contracts designated by the DOE or NNSA Procurement Executive, must contain a scope of work section that describes, in general terms, work planned and/or required to be performed. Work to be performed under the contract shall be assigned through the use of a work authorization to control individual work activities performed within the scope of work. Work authorizations must be issued prior to the commencement of the work and incurrence of any costs.

970.1170–2 Contract provision.

The Contracting Officer shall insert the clause at 48 CFR 970.5211–1, Work Authorization, in each solicitation and contract for the management and operation of a DOE site or facility and in other contracts designated by the DOE or NNSA Procurement Executive.

Subpart 970.37—Facilities Management Contracting

970.3770–2 [Removed and Reserved]

7. Section 970.3770–2 is removed and reserved.

Subpart 970.52—Solicitation Provisions and Contract Clauses for Management and Operating Contracts

8. Section 970.5204–2 is amended by revising the clause date and paragraph (e) to read as follows:

970.5204–2 Laws, regulations, and DOE directives.

* * * * *

Laws, Regulations, and DOE Directives (XXX–XXXX)

* * * * *

(e) Regardless of the performer of the work, the contractor is responsible for compliance with the requirements of this clause. The contractor is responsible for flowing down the requirements of this clause to subcontracts at any tier to the extent necessary to ensure the contractor's compliance with the requirements. Unless the contract specifically instructs the contractor regarding subcontract flow-down, the contractor shall be responsible for determining the appropriate implementation of the requirements, including the extent to, and manner in which, requirements should be reflected in subcontracts. In doing so, the contractor retains the same responsibility for performance and cost management that it has for all contract efforts. Specifically, the contractor shall not unnecessarily or imprudently flow down requirements to subcontracts and shall only incur costs that would be incurred by a prudent person in the conduct of a competitive business.

(End of clause)

9. Section 970.5211 is added to read as follows:

970.5211–1 Work authorization.

As prescribed in 970.1170–2, insert the following clause.

WORK AUTHORIZATION (XXX–XXXX)

(a) Work Authorization Proposal. Prior to the start of each fiscal year, the Contracting Officer (CO) or designee shall provide the contractor with program execution guidance in sufficient detail to enable the contractor to develop an estimated cost, scope, and schedule. In addition, the Contracting Officer may unilaterally assign work. The contractor shall submit to the Contracting Officer or other designated official, a detailed description of work, a budget of estimated costs, and a schedule of performance for the work it recommends be undertaken during that upcoming fiscal year.

(b) Cost Estimates. The contractor and the Contracting Officer shall establish a budget of estimated costs, description of work, and schedule of performance for each work assignment. If agreement cannot be reached as to scope, schedule, and estimated cost, the Contracting Officer may issue a unilateral work authorization, pursuant to this clause. The work authorization, whether issued bilaterally or unilaterally shall become part of the contract. No activities shall be authorized or costs incurred prior to Contracting Officer issuance of a work authorization or direction concerning continuation of activities of the contract.

(c) Performance. The contractor will perform work as specified in the work authorization, consistent with the terms and conditions of this contract.

(d) Modification. The Contracting Officer may at any time, without notice, issue changes to work authorizations within the overall scope of the contract. A proposal for adjustment in estimated costs and schedule for performance of work, recognizing work made unnecessary as a result, along with new work, shall be submitted by the contractor in accordance with paragraph (a) of this clause. Resolution shall be in accordance with paragraph (b) of this clause.

(e) Increase in Estimated Cost. The contractor shall notify the Contracting Officer immediately whenever the cost incurred, plus the projected cost to complete work is projected to differ (plus or minus) from the estimate by 10 percent. The contractor shall submit a proposal for modification in

accordance with paragraph (a) of this clause. Resolution shall be in accordance with paragraph (b) of this clause.

(f) Expenditure of Funds and Incurrence of Costs. The expenditure of monies by the contractor in the performance of all authorized work shall be governed by the ''Obligation of Funds'' or equivalent clause of the contract.

(g) Responsibility to achieve Environment, Safety, Health, and Security Compliance. Notwithstanding other provisions of the contract, the contractor may, in the event of an emergency, take that corrective action necessary to sustain operations consistent with applicable environmental, safety, health, and security statutes, regulations, and procedures. If such action is taken, the contractor shall notify the Contracting Officer within 24 hours of initiation and, within 30 days, submit a proposal for adjustment in estimated costs and schedule established in accordance with paragraphs (a) and (b) of this clause.

(End of clause)

10. The clause at section 970.5223–1 is amended by revising the clause date, paragraphs (d), (e), and (h) to read as follows:

970.5223–1 Integration of environment, safety, and health into work planning and execution.

* * * * *

Integration of Environment, Safety, and Health into Work Planning and Execution (XXX–XXXX)

* * * * *

(d) The System shall describe how the contractor will establish, document, and implement safety performance objectives, performance measures, and commitments consistent with DOE program guidance while maintaining the integrity of the System. The System shall also describe how the contractor will evaluate its effectiveness as well as maintenance and improvement processes.

(e) The contractor shall submit to the Contracting Officer documentation of its System for review and approval. Dates for submittal, discussions, and revisions to the System will be established by the Contracting Officer. Guidance on the preparation, content, review, and approval of the System will be provided by the Contracting Officer. The contractor will evaluate System implementation and effectiveness annually. Formal change control and maintenance of the System is required. On an annual basis, the contractor shall review and update, for DOE approval, its safety performance objectives, performance measures, and commitments consistent with DOE's program guidance and direction. Resources shall be identified and allocated to meet the safety objectives and performance commitments as well as maintain the integrity of the entire System. Accordingly, the System shall be integrated with the contractor's business processes for work planning, budgeting, authorization, execution, and change control.

* * * * *

(h) Regardless of the performer of the work, the contractor is responsible for compliance with the ES&H requirements applicable to this contract. Unless the contract specifically instructs the contractor regarding subcontract flow-down, the contractor shall be responsible for determining the appropriate implementation of the requirements, including the extent to which, and manner in which, requirements should be reflected in subcontracts. In doing so, the contractor retains the same responsibility for performance and cost management that it has for all contract efforts. Specifically, the contractor shall not unnecessarily or imprudently flow down requirements to subcontracts and shall only incur costs that would be incurred by a prudent person in the conduct of a competitive business.

* * * * *

970.5237–2 [Removed and reserved]

11. Section 970.5237–2 is removed and reserved.

[FR Doc. 05–14810 Filed 7–28–05; 8:45 am]

BILLING CODE 6450–01–P

Notices

Federal Register
Vol. 70, No. 145
Friday, July 29, 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.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Public Meeting Regarding the Pensacola Naval Air Station Historic District

AGENCY: Advisory Council on Historic Preservation.

ACTION: Notice of public meeting, and opportunity for public comments, regarding the proposed demolition of properties within the Pensacola Naval Air Station Historic District.

SUMMARY: The Advisory Council on Historic Preservation (ACHP) will hold a public meeting regarding the Navy's intent to demolish several buildings within the Pensacola Naval Air Station Historic District. After considering public input, the ACHP will issue its formal comments on the proposed action to the Navy. The Navy will take into account the ACHP's comments prior to making a final decision on the matter.

DATES: The public meeting will take place on Monday, August 8, 2005, starting at 12:30 p.m. CDT (we expect the meeting to end at 4 p.m. CDT). Submit written comments on or before August 8, 2005.

ADDRESSES: The public meeting will take place at the McMillan Room (room 3720), located in building 3700, Pensacola Junior College (Warrington Campus), 5555 Hwy 98 West, Pensacola, Florida.

Address all written comments concerning this proposed action by the Navy to Don Klima, Office of Federal Agency Programs, Advisory Council on Historic Preservation, 1100 Pennsylvania Avenue, NW., Suite 809, Washington, DC 20004. You may also submit written comments via facsimile at (202) 606–8672 or via electronic mail at *dklima@achp.gov.*

FOR FURTHER INFORMATION CONTACT: Don Klima, (202) 606–8503.

SUPPLEMENTARY INFORMATION: Section 106 of the National Historic Preservation Act requires Federal agencies to consider the effects of their undertakings on historic properties and provide the Advisory Council on Historic Preservation (''ACHP'') a reasonable opportunity to comment with regard to such undertakings. The ACHP has issued the regulations that set forth the process through which Federal agencies comply with these duties. Those regulations are codified under 36 CFR part 800 (''Section 106 regulations'').

Under the Section 106 regulations, when an undertaking may adversely affect historic properties, the Federal agency must consult in an attempt to reach an agreement to avoid, minimize or mitigate those adverse effects. Such an agreement is called a Memorandum of Agreement (MOA).

On September 15, 2004, Hurricane Ivan struck the panhandle area of Florida, causing extensive damage to Naval Air Station Pensacola and environs. Sustaining particular damage was the Pensacola Naval Air Station Historic District, a National Historic Landmark.

On March 11, 2005 an MOA was concluded between the Department of the Navy, the Florida State Historic Preservation Officer, and the ACHP for proposed plans by the Navy to recover from damages caused by Hurricane Ivan. The National Trust for Historic Preservation (NTHP) and the National Park Service (NPS) also participated in that consultation. Consultation was very difficult due to time pressures and the extensive amount of demolition proposed by the Navy.

The MOA accepted much of the proposed demolition of historic structures, but identified 16 structures of ''greatest significance'' to the historic district. The MOA called for the Navy to stabilize these structures and prepare for each a ''preservation analysis report'' (PAR) that would examine the historic and architectural value of each buildings and assess damages and costs associated with various treatment options. The consulting parties were to then be given an opportunity to comment on the reports, following which the Navy would then decide how each of the 16 buildings would be treated. Following notification of the Navy's decision, the consulting parties could object to the Navy's decision, thus triggering dispute resolution provisions in the MOA that provide for further ACHP review and comment.

By June 18, 2005, the 16 PARs had been provided to the consulting parties. Extensive comments were provided on the reports by the Florida SHPO and the NTHP on July 12th and July 13th, respectively.

On July 15th, the Navy notified the consulting parties of its intention to proceed with demolition of all but 3 of the 16 identified buildings. Anticipating likely objection from the consulting parties, the Navy invoked the dispute resolution provisions in the MOA.

In response, the ACHP Chairman has elected to prepare comments for the Navy pursuant to the MOA and 36 CFR 800.7(c), and convened a panel of ACHP members to review this matter and develop ACHP comments. The Navy must consider these comments in reaching a final decision on the treatment of the 16 buildings.

The public meeting announced in this notice is designed to provide the public with an opportunity to provide its input regarding the ACHP's final comment on the matter.

Dated: July 26, 2005.

Don Klima,

Acting Executive Director.

[FR Doc. 05–15038 Filed 7–28–05; 8:45 am]

BILLING CODE 4310–10–M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 05–058–1]

Notice of Public Meeting on the Proposed Design and Development of an ePermits System

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of public meeting.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service is holding a public meeting to introduce, and obtain feedback on, one portion of our proposed ePermits system. This meeting will focus on applications and permits for transiting and importing plants and plant products, including propagative material, fruits and vegetables, logs and

lumber, and material listed in the Convention on International Trade in Endangered Species of Wild Fauna and Flora.

DATES: The meeting will be held on Wednesday, August 24, 2005, from 9 a.m. to 4:30 p.m.

ADDRESSES: The public meeting will be held at the USDA Center at Riverside, 4700 River Road, Riverdale, MD.

FOR FURTHER INFORMATION CONTACT: Ms. Gwendolyn Burnett, Regulatory Permit Specialist, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737; phone (301) 734–8758, or e-mail: *Gwendolyn.L.Burnett@aphis.usda.gov*.

SUPPLEMENTARY INFORMATION: The Animal and Plant Health Inspection Service's (APHIS) Plant Protection and Quarantine program (PPQ) issues permits to persons who wish to import regulated plants and plant products into the United States or to transit regulated plants and plant products through the United States. Persons wishing to import plants and plant products or transit them through the United States must apply for a permit by submitting PPQ Form 585 (Application for Permit to Import Timber or Timber Products), Form 586 (Application for Permit to Transit Plants and/or Plant Products through the United States), Form 587 (Application for Permit to Import Plants or Plant Products), Form 588 (Application for Permit to Import Prohibited Plants or Plant Products for Experimental Purposes), or Form 621 (Application for Protected Plant Permit to Engage in the Business of Importing, Exporting, or Reexporting Terrestrial Plants), as appropriate. PPQ issued more than 3,500 permits in 2004.

The APHIS ePermits system is a Web-based user interface that supports the electronic filing, processing, and tracking of applications for APHIS permits, including plant and plant product, plant pest, animal and animal product, and biotechnology permits. The system is scheduled to become available on a limited basis in the fall of 2005, with a series of expansions to follow. When fully implemented, the system will allow applicants to apply for, track the status of, and receive permits using the Internet.

In order to provide an opportunity for applicants for various plant-related permits to review and comment on the software that has been developed for the ePermits system, APHIS is organizing a public meeting to demonstrate the capabilities of the online interface and the permit application data entry process. We will also provide information on short- and long-term plans for the ePermits system and how to register as an ePermits user. This meeting will focus on applications and permits for transiting and importing plants and plant products, including propagative material, fruits and vegetables, logs and lumber, and material listed in the Convention on International Trade in Endangered Species of Wild Fauna and Flora. The public meeting will be held in Riverdale, MD, on August 24, 2005, beginning at 9 a.m., and is scheduled to end at 4:30 p.m.

Registration

Due to space considerations, attendance at the public meeting will be limited to 50 people. We encourage preregistration. You may preregister by visiting *http://www.aphis.usda.gov/ppq/permits/stakeholders/workshop2/index.html* or by contacting the person listed under **FOR FURTHER INFORMATION CONTACT** by August 19, 2005. Onsite registration for any remaining spaces will be held on the day of the meeting from 8 a.m. to 10 a.m.

Parking and Security Procedures

Please note that a fee of $2.25 is required to enter the parking lot at the USDA Center at Riverside. The machine accepts $1 bills or quarters.

Picture identification is required to be admitted into the building. Upon entering the building, visitors should inform security personnel that they are attending the ePermits meeting.

Done in Washington, DC, this 22nd day of July 2005.

Elizabeth Gaston,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 05–15092 Filed 7–28–05; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 04–081–2]

Notice of Availability of a Document Concerning the Identification of EU Administrative Units

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of availability.

SUMMARY: We are advising the public that we are finalizing, with minor changes, a draft document that had been prepared by the Animal and Plant Health Inspection Service to identify the smallest administrative jurisdictions within 11 Member States of the European Union that we would consider ''regions'' in the event of future animal disease outbreaks. The draft document referred to these jurisdictions as ''administrative units'' and also reevaluated the administrative units already identified for Italy.

FOR FURTHER INFORMATION CONTACT: Dr. Chip Wells, Senior Staff Veterinarian, Regionalization Evaluation Services Staff, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 38, Riverdale, MD 20737–1231; (301) 734–4356.

SUPPLEMENTARY INFORMATION:

Background

On April 21, 2005, the Animal and Plant Health Inspection Service (APHIS) published in the **Federal Register** a notice (70 FR 20733–20734, Docket No. 04–081–1) in which we announced the availability of, and requested comments on, a draft document entitled ''APHIS Considerations on the Identification of Administrative Units for Certain Member States of the European Union.'' This draft document identified the smallest administrative jurisdictions within 11 Member States of the European Union (EU) that we would consider ''regions'' in the event of future animal disease outbreaks. In the draft document we referred to those regions as ''administrative units'' (AUs). These Member States are: Austria, Belgium, Denmark, Finland, Greece, Ireland, Luxembourg, the Netherlands, Portugal, Sweden, and the United Kingdom. We also reevaluated the AUs already identified for Italy.

Comments on the draft document were required to be received on or before June 20, 2005. We received one comment by that date, from the European Communities (EC). The EC was generally supportive of the draft document, however they requested confirmation that APHIS intends to implement regionalization of Member States of the EU to the AU level for other animal diseases in addition to classical swine fever. As stated in the notice, the concept of regionalization to the AU level is not disease-specific and would apply for all animal diseases.

The EC also requested that APHIS identify AUs in the 10 new EU Member States which APHIS would consider the smallest possible administrative jurisdiction with effective control over animal movement and control of animal disease in those Member States. APHIS plans to identify AUs for the 10 new EU Member States as those countries are evaluated. In November 2004, APHIS' Veterinary Services (VS) conducted site visits to Hungary, Slovakia, Poland, and Lithuania, and site visits to Slovenia

and Estonia are planned for fall 2005. Site visits to the Czech Republic and Latvia are currently underway. VS plans to identify the appropriate AU for each of these Member States in the risk analyses that result from their evaluations. At this time, VS has not received sufficient information from Malta and Cyprus to begin its evaluations in those Member States.

The EC also stated that the name of the Swedish governmental agencies mentioned on page 13 of the draft document were not correctly translated. We have corrected those errors in the finalized version of the document and use the proper translations provided by the EC. The final version of the document with those changes may be viewed on the Internet at *http://www.aphis.usda.gov/vs/ncie/reg-request.html*. At the bottom of that Web site page, click on ''Information previously submitted by Regions requesting export approval and supporting documentation.'' At the next screen, click on the triangle beside ''European Union/Not Specified/Classical Swine Fever,'' then click on the triangle beside ''Response by APHIS,'' which will reveal a link to the document.

Done in Washington, DC, this 25th day of July 2005.

Elizabeth E. Gaston,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E5–4061 Filed 7–28–05; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

South Gifford Pinchot National Forest Resource Advisory Committee Meeting Notice

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The South Gifford Pinchot National Forest Resource Advisory Committee will meet on Friday, August, 19, 2005 at the Skamania County Public Works Department basement located in the Courthouse Annex, 170 N.W. Vancouver Avenue, Stevenson, WA 98610. The meeting will begin at 9:30 a.m. and continue until 4 p.m. The purpose of the meeting is to review proposals for Title II funding of Forest projects under the Secure Rural Schools and County Self-Determination Act of 2000.

All South Gifford Pinchot National Forest Resource Advisory Committee meetings are open to the public. Interested citizens are encouraged to attend. The ''open forum'' provides opportunity for the public to bring issues, concerns, and discussion topics to the Advisory Committee. The ''open forum'' is scheduled to occur at 9:45 a.m. Interested speakers will need to register prior to the open forum period. The committee welcomes the public's written comments on committee business at any time.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Roger Peterson, Public Affairs Specialist, at (360) 891–5007, or write Forest Headquarters Office, Gifford Pinchot National Forest, 10600 NE. 51st Circle, Vancouver, WA 98682.

Dated: July 25, 2005.

Ron Freeman,

Acting Forest Supervisor.

[FR Doc. 05–15018 Filed 7–28–05; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Administrative Procedures for Processing Appeals Under 36 CFR, Part 215, for Projects or Activities Implementing Land and Resource Management Plans on National Forest System Lands

AGENCY: Forest Service, USDA.

ACTION: Notice of issuance of agency directive.

SUMMARY: The Forest Service is amending Forest Service Handbook 1509.12 to provide guidance to employees for processing appeals covered under Title 36, Code of Federal Regulations, part 215, involving projects or activities implementing land and resource management plans on National Forest System lands. The handbook provides direction on the authority, objectives, policies, and responsibilities of line officers and direction to field personnel on how to set up a notice and comment period, receive and record comments, provide information on decision notification, calculate appeal filing and time periods, process and dispose of an appeal, and instructions regarding the content and management of appeal records. This amendment is issued as amendment number 1509.12–2005–1 to FSH 1509.12.

DATES: This amendment is effective July 29, 2005.

ADDRESSES: Amendment 1509.12–2005–1 is available electronically from the Forest Service via the World Wide Web/Internet at *http://www.fs.fed.us/im/directives.* Single paper copies of the amendment are also available by contacting Dennis Roy, Ecosystem Management Coordination Staff, Mail Stop 1104, Forest Service, 1400 Independence Avenue, SW., Washington, DC 20250–1104 (telephone 202–205–2869).

FOR FURTHER INFORMATION CONTACT: Dennis Roy, Ecosystem Management Coordination Staff (202–205–2869).

SUPPLEMENTARY INFORMATION: A proposed rule and request for public comment to amend the rule adopted in 1994 for 36 CFR part 215 was published December 18, 2002. Its purpose was to clarify certain provisions and reduce complexity in the 1994 rule, improve efficiency of processing appeals, encourage early and effective public participation in the environmental analysis of projects and activities, and to ensure consistency with the provisions of the statutory authority. Approximately 25,000 comment letters were received. All comments were considered in development of a final appeal rule at 36 CFR part 215 and published in the **Federal Register** on June 4, 2003 (68 FR 33582). The final appeal rule included changes to address emergency situations; notice and comment procedures and time periods; substantive comments; who may appeal; Deciding Officers; content of an appeal; and the formal disposition process. This amendment to FSH 1509.12 describes administrative procedures for implementing provisions of the final rule.

Dated: June 28, 2005.

Christopher Pyron,

Acting Chief.

[FR Doc. 05–15063 Filed 7–28–05; 8:45 am]

BILLING CODE 3410–11–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions

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

ACTION: Additions to Procurement List.

SUMMARY: This action adds to the Procurement List products to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: August 28, 2005.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800,

1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION OR TO SUBMIT COMMENTS CONTACT: Sheryl D. Kennerly, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail *SKennerly@jwod.gov.*

SUPPLEMENTARY INFORMATION: On May 27, 2005, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (70 FR 30692) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the products and impact of the additions on the current or most recent contractors, the Committee has determined that the products listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

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

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

2. The action will result in authorizing small entities to furnish the products to the Government.

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

End of Certification

Accordingly, the following products are added to the Procurement List:

Products

Cap, Utility, Camouflage Type II without insignia
NSN: 8405–01–246–4182—Small.
NSN: 8405–01–246–4183—Medium.
NSN: 8405–01–246–4184—Large.
NSN: 8405–01–246–4185—X-Large.
NSN: 8405–01–246–4181—X-Small.
NPA: Southeastern Kentucky Rehabilitation Industries, Inc., Corbin, Kentucky
Contracting Activity: Defense Supply Center Philadelphia, Philadelphia, Pennsylvania.

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

G. John Heyer,
General Counsel.

[FR Doc. E5–4059 Filed 7–28–05; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletions

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

ACTION: Proposed Additions to and Deletions from Procurement List.

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

Comments Must Be Received on or Before: August 28, 2005.

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

FOR FURTHER INFORMATION OR TO SUBMIT COMMENTS CONTACT: Sheryl D. Kennerly, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail *SKennerly@jwod.gov.*

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

Additions

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

Regulatory Flexibility Act Certification

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

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

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

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

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

End of Certification

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

Services

Service Type/Location: Base Supply Center, Maxwell Air Force Base, Alabama.
NPA: Alabama Industries for the Blind, Talladega, Alabama.
Contracting Activity: 42nd CONS/CC, Maxwell AFB, Alabama.

Service Type/Location: Document Destruction, NARA—Pacific Alaska Region, 6125 Sand Point Way, NE., Seattle, Washington.
NPA: Northwest Center for the Retarded, Seattle, Washington,
Contracting Activity: National Archives & Records Administration, College Park, Maryland.

Deletions

Regulatory Flexibility Act Certification

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

1. If approved, the action may result in additional reporting, recordkeeping or other compliance requirements for small entities.

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

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

End of Certification

The following services are proposed for deletion from the Procurement List:

Services

Service Type/Location: Base Supply Center, Naval Supply Center, Puget Sound, Building 467, Bremerton, Washington.
NPA: Peninsula Services, Bremerton, Washington,

Contracting Activity: Fleet and Industrial Supply Center, Puget Sound, Washington.
Service Type/Location: Janitorial/Custodial, Federal Warehouse, 2760 NW Yeon Avenue, Portland, Oregon.
NPA: Portland Habilitation Center, Inc., Portland, Oregon.
Contracting Activity: GSA, Public Buildings Service, Auburn, Washington.
Service Type/Location: Janitorial/Custodial, Naval Reserve Center, Fort Harrison, South Avenue, Helena, Montana.
NPA: Helena Industries, Inc., Helena, Montana.
Contracting Activity: Department of the Navy, Everett, Washington.
Service Type/Location: Janitorial/Custodial, Ross Complex, 5411 NE Highway 99, Vancouver, Washington.
NPA: Portland Habilitation Center, Inc., Portland, Oregon.
Contracting Activity: Department of Energy, Washington, DC.
Service Type/Location: Janitorial/Custodial, U.S. Federal Building and Post Office, 256 Warner Milne Road, Oregon City, Oregon.
NPA: Portland Habilitation Center, Inc., Portland, Oregon.
Contracting Activity: General Services Administration.
Service Type/Location: Janitorial/Custodial, U.S. Federal Building, 1709 Jackson Street, Omaha, Nebraska.
NPA: Goodwill Specialty Services, Inc., Omaha, Nebraska.
Contracting Activity: General Services Administration.

G. John Heyer,
General Counsel.
[FR Doc. E5–4060 Filed 7–28–05; 8:45 am]
BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau.
Title: Annual Trade Survey.
Form Number(s): SA–42, SA–42A, SA–42(MSBO), SA–42A(MSBO), SA–42(AGBR), SA–42A(AGBR).
Agency Approval Number: 0607–0195.
Type of Request: Revision of a currently approved collection.
Burden: 3,937 hours.
Number of Respondents: 8,490.
Avg Hours Per Response: 28 minutes.
Needs and Uses: The U.S. Census Bureau is requesting a revision to the current Office Of Management and Budget (OMB) clearance for the Annual Trade Survey (ATS). It currently covers wholesale distributor establishments, manufacturers' sales branches and offices (MSBOs) and will be expanded to include agents, brokers and electronic markets (AGBR). The survey is an official source of annual sales, inventory, and value added measures for wholesale establishments located in the United States. The ATS provides annual data needed to improve the accuracy of the sales estimates and inventory adjustments in the Gross Domestic Product (GDP) and for benchmarking results of the Monthly Wholesale Trade Survey (MWTS) [OMB No. 0607–0190]. Data on agents, brokers, and electronic markets will address a longstanding Bureau of Economic Analysis (BEA) priority to obtain annual measures of sales, commissions, and value of sales arranged for others, e-commerce sales, and operating expenses to improve BEA's estimates, a key component of the GDP estimate. The estimates compiled from this survey provide valuable information for economic policy decisions by the government and will be widely used by private businesses, trade organizations, professional associations, and other business research and analysis organizations.

This request is for the clearance of four existing report forms, the SA–42 and SA–42A, the SA–42 (MSBO) and SA–42A (MSBO), and two new forms, SA–42 (AGBR) and SA–42A (AGBR), which will be used to collect data for AGBRs. The survey report forms are used to collect total sales, e-commerce sales, year-end inventory, and inventory valuation methods with the exception of AGBRs. In addition purchases are collected for wholesale distributors and operating expenses for MSBOs and AGBRs. The forms request similar but unique sets of data items to accommodate both wholesale distributors, manufacturers sales branches and offices and agents, brokers and electronic markets as well as both large and small firms. This survey will use the North American Industry Classification System (NAICS).

The Census Bureau tabulates the collected data to produce estimates of annual sales, year-end inventories and inventory valuation methods, and inventory/sales ratios. In addition, estimates of purchases and gross margins will be produced for wholesale distributors and estimates of operating expenses will be produced for MSBOs and AGBRs.

BEA uses information from the ATS in the National Income and Product Accounts and the input-output (I–O) accounts. Data on inventories, purchases, and operating expenses are used to prepare estimates of the change in private inventories components of GDP. Data on sales are used to prepare inventory-sales ratios. Data on inventories, sales, purchases, and operating expenses are used to derive industry output for the I–O accounts and for the annual GDP by industry estimates. Data on sales taxes, which are collected on this survey quinquennially, are also used to prepare estimates of GDP by industry and to derive industry output for the I–O accounts. These estimates will have a high BEA priority because of their timeliness and because of the adjustments made to prior period data based on final book figures.

The Census Bureau also uses wholesale distributor annual data as a benchmark for the sales and inventory estimates from the MWTS. Other government agencies and businesses will use the published estimates to gauge the current trends of the economy. The Bureau of Labor Statistics uses the data as input to their Producer Price Indexes and in developing productivity measurements.

Affected Public: Business or other for-profit.
Frequency: Annually.
Respondent's Obligation: Mandatory.
Legal Authority: Title 13 U.S.C., Sections 182, 224, and 225.
OMB Desk Officer: Susan Schechter, (202) 395–5103.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dhynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Susan Schechter, OMB Desk Officer either by fax (202–395–7245) or e-mail (*susan_schechter@omb.eop.gov*).

Dated: July 25, 2005.

Madeleine Clayton,
Management Analyst, Office of the Chief Information Officer.
[FR Doc. 05–14988 Filed 7–28–05; 8:45 am]
BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau.

Title: Current Industrial Reports, Wave III.

Form Number(s): Various.

Agency Approval Number: 0607–0476.

Type of Request: Revision of a currently approved collection.

Burden: 13,998 hours.

Number of Respondents: 9,749.

Avg Hours Per Response: 51 minutes.

Needs and Uses: The U.S. Census Bureau is requesting a revision of the mandatory and voluntary surveys in Wave III of the Current Industrial Reports (CIR) program. The Census Bureau conducts a series of monthly, quarterly, and annual surveys as part of the CIR program. The CIR program focuses primarily on the quantity and value of shipments data of particular products and occasionally with data on production and inventories; unfilled orders, receipts, stocks and consumption; and comparative data on domestic production, exports, and imports of the products they cover.

Due to the large number of surveys in the CIR program, for clearance purposes, the CIR surveys are divided into ''waves.'' One wave is resubmitted for clearance each year. This year the Census Bureau is submitting the mandatory and voluntary surveys of Wave III for clearance.

Three surveys currently contained in other CIR waves, MA334B, ''Selected Instruments and Related Products'', MA334S, ''Electromedical Equipment and Irradiation Equipment'', and MA335A, ''Switchgear, Switchboard Apparatus, Relays, and Industrial Controls,'' will be discontinued and four new surveys will be created in their place. These four new surveys will be added to this wave. They are MA334A, ''Analytical and Biomedical Instruments'', MA334C, ''Control Instruments'', MA334D, ''Defense, Navigational and Aerospace Electronics'', and MA334T ''Meters and Test Devices''. We are moving the following surveys from another wave into this wave because of changes in survey content. They are MA334M, ''Consumer Electronics'' and MA334Q, ''Semiconductors, Printed Circuit Boards, and Electronic Components'' (will be renamed to ''Electronic Components''). After a comprehensive review of the entire CIR program, we decided to eliminate a number of lower priority surveys including MQ313D, ''Consumption on the Woolen System'', MA315D, ''Gloves and Mittens'', and MA335L, ''Electric Light Fixtures''. We are also renaming two surveys in this wave to reflect the substantial changes in their level of detail. They are MA334P, ''Communication Equipment'' to ''Telecommunications'' and MA334R, ''Computers and Office and Accounting Machines'' to ''Computers''.

In 2006, we will change the frequency of collection of MA334P, ''Telecommunications'' and MA334R, ''Computers'' from annual surveys to quarterly surveys. This was requested by one of our primary data users, the Federal Reserve Board (FRB). Technology is changing so quickly in the areas covered by these surveys that annual collections do not provide the immediacy of information needed by the FRB. We are reducing the amount of detail collected in these areas to facilitate the more frequent collection. The reduced detail will be introduced in 2005 although the quarterly collection will not begin until 2006. The quarterly collection will be voluntary with an annual mandatory counterpart which will be sent only to those respondents electing not to participate in the more frequent collection.

Primary users of these data are government and regulatory agencies, business firms, trade associations, and private research and consulting organizations. The Federal Reserve Board uses CIR data in its monthly index of industrial production as well as its annual revision to the index. The Bureau of Economic Analysis (BEA) and the Bureau of Labor Statistics (BLS) use the CIR data in the estimate of components of gross domestic product (GDP) and the estimate of output for productivity analysis, respectively. Many government agencies, such as the International Trade Commission, Department of Agriculture, Food and Drug Administration, Department of Energy, Federal Aviation Administration, BEA, and International Trade Administration use the data for industrial analysis, projections, and monitoring import penetration. Private business firms and organizations use the data for trend projections, market analysis, product planning, and other economic and business-oriented analysis. Since the CIR program is the sole, consistent source of information regarding specific manufactured products in the intercensal years, the absence thereof would severely hinder the Federal Government's ability to measure and monitor important segments of the domestic economy, as well as the effect of import penetration.

Affected Public: Business or other for-profit.

Frequency: Wave III contains surveys conducted monthly and annually.

Respondent's Obligation: The CIR program contains surveys that are mandatory and voluntary.

Legal Authority: Title 13 U.S.C., Sections 61, 182, 224, and 225.

OMB Desk Officer: Susan Schechter, (202) 395–5103.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dhynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Susan Schechter, OMB Desk Officer either by fax (202–395–7245) or e-mail (*susan_schechter@omb.eop.gov*).

Dated: July 25, 2005.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 05–14989 Filed 7–28–05; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau.

Title: Survey of Residential Building or Zoning Systems.

Form Number(s): C–411.

Agency Approval Number: 0607–0350.

Type of Request: Revision of a currently approved collection.

Burden: 500 hours.

Number of Respondents: 2,000.

Avg. Hours per Response: 15 minutes.

Needs and Uses: The U.S. Census Bureau requests a revision of a currently approved collection for Form C–411, ''Survey of Building and Zoning Permit Systems'' which will be renamed ''Survey of Residential Building or Zoning Permit Systems.'' The Census Bureau produces statistics used to

monitor activity in the large and dynamic construction industry. These statistics help state and local governments and the Federal Government, as well as private industry, to analyze this important sector of the economy. The accuracy of the Census Bureau statistics regarding the amount of construction authorized depends on data supplied by building and zoning officials throughout the country. The Census Bureau uses Form C–411 to obtain information from state and local building permit officials needed for updating the universe of permit-issuing places from which samples for the Report of Privately-Owned Residential Building or Zoning Permits Issued (OMB number 0607–0094) also known as the Building Permits Survey (BPS), and the Survey of Housing Starts, Sales, and Completions (OMB number 0607–0110) also known as Survey of Construction (SOC) are selected. The questions pertain to the legal requirements for issuing building or zoning permits in the local jurisdictions. Information is obtained on such items as geographic coverage and types of construction for which permits are issued.

The form is sent to jurisdictions when the Census Bureau has reason to believe that a new permit system has been established or an existing one has changed. This is based on information from a variety of sources including survey respondents, regional councils and Census' Geography Division which keeps abreast of changes in corporate status.

We use the information collected to verify the existence of new permit systems or changes to existing systems. Based on the information, the MCD adds new permit-issuing places to the universe, deletes places no longer issuing permits, and makes changes to the universe to reflect those places that have merged.

We plan to change the format of the form and add the following questions:

(1) What type of permit would be issued for ''Assisted living facility''? (Section 4.A.)

(2) ''The Census Bureau collects information from each permit office on number of buildings, number of units, and valuation of construction for new residential structures. Are these three data items available from your office?'' (Section 4.C.)

(3) ''Please provide an estimate of how many new housing units were built in your jurisdiction during the prior calendar year:'' (Section 4.D.)

We need the above information to ensure that we update our universe of permit-issuing places correctly for these types of places.

We are changing the format of the form to utilize space and to add skip patterns to provide direction for better comprehension.

Affected Public: State, local or tribal government.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 U.S.C., Sections 161 and 182.

OMB Desk Officer: Susan Schechter, (202) 395–5103.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dhynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Susan Schechter, OMB Desk Officer either by fax (202–395–7245) or e-mail (*susan_schechter@omb.eop.gov*).

Dated: July 25, 2005.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 05–14990 Filed 7–28–05; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau.

Title: Current Population Survey, October 2005 School Enrollment Supplement.

Form Number(s): None.

Agency Approval Number: 0607–0464.

Type of Request: Revision of a currently approved collection.

Burden: 2,750 hours.

Number of Respondents: 55,000.

Avg. Hours per Response: 3 minutes.

Needs and Uses: The U.S. Census Bureau is seeking Office of Management and Budget approval of the supplemental inquiry concerning school enrollment to be conducted in conjunction with the Current Population Survey (CPS) October 2005 Supplement.

The School Enrollment Supplement is jointly sponsored by the U.S. Census Bureau, the Bureau of Labor Statistics (BLS), and the National Center for Education Statistics (NCES).

This data series provides basic information on enrollment status of various segments of the population necessary as background for policy formation and implementation. The CPS October supplement is the only annual source of data on public/private elementary and secondary school enrollment and characteristics of private school students and their families, which are used for tracking historical trends and for policy planning and support. The basic school enrollment questions have been collected annually in the CPS for 40 years. Consequently, this supplement is the only source of historical data—at the national level—on the age distribution and family characteristics of college students, and on the demographic characteristics of preprimary school enrollment. As part of the federal government's efforts to collect data and provide timely information to local governments for policymaking decisions, this supplement provides national trends in enrollment and progress in school. Discontinuance of these data would mean not complying with the federal government's obligation to provide data to decision makers on current educational issues and would disrupt a data series that has been in existence for 40 years.

Affected Public: Individuals or households.

Frequency: Annually.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 U.S.C., Section 182 and Title 29 U.S.C., Sections 1–9.

OMB Desk Officer: Susan Schechter, (202) 395–5103.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dhynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Susan Schechter, OMB Desk Officer either by fax (202–395–7245) or e-mail (*susan_schechter@omb.eop.gov*).

Dated: July 25, 2005.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 05–14991 Filed 7–28–05; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Advanced Technology Program (ATP) Advisory Committee

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Request for nominations of members to serve on the Advanced Technology Program Advisory Committee.

SUMMARY: NIST invites and requests nomination of individuals for appointment to the Advanced Technology Program Advisory Committee. NIST will consider nominations received in response to this notice for appointment to the Committee, in additional to nominations already received.

DATES: Please submit nominations on or before August 15, 2005.

ADDRESSES: Please submit nominations to Mr. Marc Stanley, National Institute of Standards and Technology, 100 Bureau Drive, Mail Stop 4700, Gaithersburg, MD 20899–4700. Nominations may also be submitted via FAX to 301–869–1150.

Additional information regarding the Committee, including its charter and current membership list may be found on its electronic home page at: *http://www.atp.nist.gov/atp/adv_com/ac_menu.htm.*

FOR FURTHER INFORMATION CONTACT: Mr. Marc Stanley, National Institute of Standards and Technology, 100 Bureau Drive, Mail Stop 4700, Gaithersburg, MD 20899–4700; telephone 301–975–4644, fax 301–301–869–1150; or via email at *marc.stanley@nist.gov.*

SUPPLEMENTARY INFORMATION: The Committee will advise the Director of the National Institute of Standards and Technology (NIST) on ATP programs, plans, and policies.

The Committee will consist of not fewer than six nor more than twelve members appointed by the Director of NIST and its membership will be balanced to reflect the wide diversity of technical disciplines and industrial sectors represented in ATP projects.

The Committee will function solely as an advisory body, in compliance with the provisions of the Federal Advisory Committee Act.

Authority: Federal Advisory Committee Act: 5 U.S.C. App.2 and General Services Administration Rule: 41 CFR subpart 101–6.10.

Dated: July 21, 2005.

Hratch G. Semerjian,

Acting Director.

[FR Doc. 05–15027 Filed 7–28–05; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Visiting Committee on Advanced Technology

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Request for nominations of members to serve on the Visiting Committee on Advanced Technology.

SUMMARY: NIST invites and requests nomination of individuals for appointment to the Visiting Committee on Advanced Technology (VCAT). The terms of some of the members of the VCAT will soon expire. NIST will consider nominations received in response to this notice for appointment to the Committee, in addition to nominations already received.

DATES: Please submit nominations on or before August 15, 2005.

ADDRESSES: Please submit nominations to Carolyn Peters, Administrative Coordinator, Visiting Committee on Advanced Technology, National Institute of Standards and Technology, 100 Bureau Drive, Mail Stop 1000, Gaithersburg, MD 20899–1000. Nominations may also be submitted via fax to (301) 869–8972.

Additional information regarding the Committee, including its charter, current membership list, and executive summary may be found on its electronic home page at: *http://www.nist.gov/director/vcat/vcat.htm.*

FOR FURTHER INFORMATION CONTACT: Carolyn Peters, Administrative Coordinator, Visiting Committee on Advanced Technology, National Institute of Standards and Technology, 100 Bureau Drive, Mail Stop 1000, Gaithersburg, MD 20899–1000, telephone (301) 975–5607, fax (301) 869–8972; or via e-mail at *carolyn.peters@nist.gov.*

SUPPLEMENTARY INFORMATION:

VCAT Information

The VCAT was established in accordance with 15 U.S.C. 278 and the Federal Advisory Committee Act (5 U.S.C. app. 2).

Objectives and Duties

1. The Committee shall review and make recommendations regarding general policy for NIST, its organization, its budget, and its programs, within the framework of applicable national policies as set forth by the President and the Congress.

2. The Committee functions solely as an advisory body, in accordance with the provisions of the Federal Advisory Committee Act.

3. The Committee shall report to the Director of NIST.

4. The Committee shall provide a written annual report, through the Director of NIST, to the Secretary of Commerce for submission to the Congress on or before January 31 each year. Such report shall deal essentially, though not necessarily exclusively, with policy issues or matters which affect the Institute, or with which the Committee in its official role as the private sector policy adviser of the Institute is concerned. Each such report shall identify areas of research and research techniques of the Institute of potential importance to the long-term competitiveness of United States industry, which could be used to assist United States enterprises and United States industrial joint research and development ventures. The Committee shall submit to the Secretary and the Congress such additional reports on specific policy matters as it deems appropriate.

Membership

1. The Committee is composed of fifteen members that provide representation of a cross-section of traditional and emerging United States industries. Members shall be selected solely on the basis of established records of distinguished service and shall be eminent in one or more fields such as business, research, new product development, engineering, labor, education, management consulting, environment, and international relations. No employee of the Federal Government shall serve as a member of the Committee.

2. The Director of the National Institute of Standards and Technology shall appoint the members of the Committee, and they will be selected on a clear, standardized basis, in accordance with applicable Department of Commerce guidance.

Miscellaneous

1. Members of the VCAT are not paid for their service, but will, upon request, be allowed travel expenses in accordance with 5 U.S.C. 5701 *et seq.*, while attending meetings of the Committee or of its subcommittees, or while otherwise performing duties at the request of the chairperson, while away from their homes or a regular place of business.

2. Meetings of the VCAT take place in the Washington, DC metropolitan area, usually at the NIST headquarters in Gaithersburg, Maryland, and once each year at the NIST headquarters in Boulder, Colorado. Meetings are one or two days in duration and are held quarterly.

3. Committee meetings are open to the public except for approximately one hour, usually at the beginning of the meeting, a closed session is held in accordance with 5 U.S.C. 552b(c)(6), because divulging information discussed in those portions of the meetings is likely to reveal information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy. All other portions of the meetings are open to the public.

Nomination Information

1. Nominations are sought from all fields described above.

2. Nominees should have established records of distinguished service and shall be eminent in fields such as business, research, new product development, engineering, labor, education, management consulting, environment and international relations. The category (field of eminence) for which the candidate is qualified should be specified in the nomination letter. Nominations for a particular category should come from organizations or individuals within that category. A summary of the candidate's qualifications should be included with the nomination, including (where applicable) current or former service on Federal advisory boards and Federal employment. In addition, each nomination letter should state that the person agrees to the nomination, acknowledge the responsibilities of serving on the VCAT, and will actively participate in good faith in the tasks of the VCAT. Besides participation in two-day meetings held each quarter, it is desired that members be able to devote the equivalent of two days between meetings to either developing or researching topics of potential interest, and so forth in furtherance of their Committee duties.

3. The Department of Commerce is committed to equal opportunity in the workplace and seeks a broad-based and diverse VCAT membership.

Dated: July 21, 2005.

Hratch G. Semerjian,

Acting Director.

[FR Doc. 05–15028 Filed 7–28–05; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Board of Overseers of the Malcolm Baldrige National Quality Award

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Request for nominations of members to serve on the Board of Overseers of the Malcolm Baldrige National Quality Award.

SUMMARY: NIST invites and requests nomination of individuals for appointment to Board of Overseers of the Malcolm Baldrige National Quality Award (Board). The terms of some of the members of the Board will soon expire. NIST will consider nominations received in response to this notice for appointment to the Committee, in addition to nominations already received.

DATES: Please submit nominations on or before August 15, 2005.

ADDRESSES: Please submit nominations to Harry Hertz, Director, National Quality Program, NIST, 100 Bureau Drive, Mail Stop 1020, Gaithersburg, MD 20899–1020. Nominations may also be submitted via FAX to 301–948–3716. Additional information regarding the Committee, including its charter, current membership list, and executive summary may be found on its electronic home page at: *http://www.quality.nist.gov*.

FOR FURTHER INFORMATION CONTACT: Harry Hertz, Director, National Quality Program and Designated Federal Official, NIST, 100 Bureau Drive, Mail Stop 1020, Gaithersburg, MD 20899–1020; telephone 301–975–2361; FAX—301–948–3716; or via e-mail at *harry.hertz@nist.gov*.

SUPPLEMENTARY INFORMATION:

I. Board of Overseers of the Malcolm Baldrige National Quality Award Information

The Board was established in accordance with 15 U.S.C. 3711a(d)(2)(B), pursuant to the Federal Advisory Committee Act (5 U.S.C. app. 2).

Objectives and Duties

1. The Board shall review the work of the private sector contractor(s), which assists the Director of the National Institute of Standards and Technology (NIST) in administering the Award. The Board will make such suggestions for the improvement of the Award process as it deems necessary.

2. The Board shall provide a written annual report on the results of Award activities to the Secretary of Commerce, along with its recommendations for the improvement of the Award process.

3. The Board will function solely as an advisory committee under the Federal Advisory Committee Act.

4. The Board will report to the Director of NIST and the Secretary of Commerce.

Membership

1. The Board will consist of approximately eleven members selected on a clear, standardized basis, in accordance with applicable Department of Commerce guidance, and for their preeminence in the field of quality management. There will be a balanced representation from U.S. service and manufacturing industries, education and health care. The Board will include members familiar with the quality improvement operations of manufacturing companies, service companies, small businesses, education, and health care. No employee of the Federal Government shall serve as a member of the Board of Overseers.

2. The Board will be appointed by the Secretary of Commerce and will serve at the discretion of the Secretary. The term of office of each Board member shall be three years. All terms will commence on March 1 and end on February 28 of the appropriate year.

Miscellaneous

1. Members of the Board shall serve without compensation, but may, upon request, be reimbursed travel expenses, including per diem, as authorized by 5 U.S.C. 5701 *et seq.*

2. The Board will meet twice annually, except that additional meetings may be called as deemed necessary by the NIST Director or by the Chairperson. Meetings are one day in duration.

3. Board meetings are open to the public. Board members do not have access to classified or proprietary information in connection with their Board duties.

II. Nomination Information

1. Nominations are sought from the private sector as described above.

2. Nominees should have established records of distinguished service and shall be familiar with the quality improvement operations of manufacturing companies, service companies, small businesses, education, and health care. The category (field of eminence) for which the candidate is qualified should be specified in the nomination letter. Nominations for a particular category should come from organizations or individuals within that category. A summary of the candidate's qualifications should be included with the nomination, including (where applicable) current or former service on federal advisory boards and federal employment. In addition, each nomination letter should state that the person agrees to the nomination, acknowledges the responsibilities of serving on the Board, and will actively participate in good faith in the tasks of the Board. Besides participation at meetings, it is desired that members be able to devote the equivalent of seven days between meetings to either developing or researching topics of potential interest, and so forth, in furtherance of their Board duties.

3. The Department of Commerce is committed to equal opportunity in the workplace and seeks a broad-based and diverse Board membership.

Dated: July 21, 2005.

Hratch G. Semerjian,

Acting Director.

[FR Doc. 05–15025 Filed 7–28–05; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Judges Panel of the Malcolm Baldrige National Quality Award

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Request for nominations of members to serve on the Judges Panel of the Malcolm Baldrige National Quality Award.

SUMMARY: NIST invites and requests nomination of individuals for appointment to the Judges Panel of the Malcolm Baldrige National Quality Award (Judges Panel). The terms of some of the members of the Judges Panel will soon expire. NIST will consider nominations received in response to this notice for appointment to the Committee, in addition to nominations already received.

DATES: Please submit nominations on or before August 15, 2005.

ADDRESSES: Please submit nominations to Harry Hertz, Director, National Quality Program, NIST, 100 Bureau Drive, Mail Stop 1020, Gaithersburg, MD 20899–1020. Nominations may also be submitted via FAX to 301–948–3716. Additional information regarding the Committee, including its charter, current membership list, and executive summary may be found on its electronic home page at: *http://www.quality.nist.gov*.

FOR FURTHER INFORMATION CONTACT: Harry Hertz, Director, National Quality Program and Designated Federal Official, NIST, 100 Bureau Drive, Mail Stop 1020, Gaithersburg, MD 20899–1020; telephone 301–975–2361; FAX—301–948–3716; or via e-mail at *harry.hertz@nist.gov*.

SUPPLEMENTARY INFORMATION:

I. Judges Panel Information

The Judges Panel was established in accordance with 15 U.S.C. 3711a(d)(1), the Federal Advisory Committee Act (5 U.S.C. app.2), The Malcolm Baldrige National Quality Improvement Act of 1987 (Pub. L. 101–107).

Objectives and Duties

1. The Judges Panel will ensure the integrity of the Malcolm Baldrige National Quality Award selection process by reviewing the results of examiners' scoring of written applications, and then voting on which applicants merit site visits by examiners to verify the accuracy of quality improvements claimed by applicants.

2. The Judges Panel will ensure that individuals on site visit teams for the Award finalists have no conflict of interest with respect to the finalists. The Panel will also review recommendations from site visits, and recommend Award recipients.

3. The Judges Panel will function solely as an advisory body, and will comply with the provisions of the Federal Advisory Committee Act.

4. The Panel will report to the Director of NIST.

Membership

1. The Judges Panel is composed of at least nine, and not more than twelve, members selected on a clear, standardized basis, in accordance with applicable Department of Commerce guidance. There will be a balanced representation from U.S. service and manufacturing industries, education, and health care and will include members familiar with quality improvement in their area of business. No employee of the Federal Government shall serve as a member of the Judges Panel.

2. The Judges Panel will be appointed by the Secretary of Commerce and will serve at the discretion of the Secretary. The term of office of each Panel member shall be three years. All terms will commence on March 1 and end on February 28 of the appropriate year.

Miscellaneous

1. Members of the Judges Panel shall serve without compensation, but may, upon request, be reimbursed travel expenses, including per diem, as authorized by 5 U.S.C. 5701 *et seq.*

2. The Judges Panel will meet four times per year. Additional meetings may be called as deemed necessary by the NIST Director or by the Chairperson. Meetings are one to four days in duration. In addition, each Judge must attend an annual three-day Examiner training course

3. Committee meetings are closed to the public pursuant to Section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. app. 2, as amended by Section 5(c) of the Government in the Sunshine Act, Public Law 94–409, and in accordance with Section 552b(c)(4) of title 5, United States Code. Since the members of the Judges Panel examine records and discuss Award applicant data, the meeting is likely to disclose trade secrets and commercial or financial information obtained from a person may be privileged or confidential.

II. Nomination Information

1. Nominations are sought from all U.S. service and manufacturing industries, education, and health care as described above.

2. Nominees should have established records of distinguished service and shall be familiar with the quality improvement operations of manufacturing companies, service companies, small businesses, education and health care organizations. The category (field of eminence) for which the candidate is qualified should be specified in the nomination letter. Nominations for a particular category should come from organizations or individuals within that category. A summary of the candidate's qualifications should be included with the nomination, including (where applicable) current or former service on federal advisory boards and federal employment. In addition, each nomination letter should state that the person agrees to the nomination,

acknowledge the responsibilities of serving on the Judges Panel, and will actively participate in good faith in the tasks of the Judges Panel. Besides participation at meetings, it is desired that members be able to devote the equivalent of seventeen days between meetings to either developing or researching topics of potential interest, reading Baldrige applications, and so forth, in furtherance of their Committee duties.

3. The Department of Commerce is committed to equal opportunity in the workplace and seeks a broad-based and diverse Judges Panel membership.

Dated: July 21, 2005.

Hratch G. Semerjian,

Acting Director.

[FR Doc. 05–15026 Filed 7–28–05; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Manufacturing Extension Partnership National Advisory Board (MEPNAB)

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Request for nominations of members to serve on the Manufacturing Extension Partnership National Advisory Board.

SUMMARY: NIST invites and requests nomination of individuals for appointment to the Manufacturing Extension Partnership National Advisory Board. NIST will consider nominations received in response to this notice for appointment to the Board, in addition to nominations already received.

DATES: Please submit nominations on or before August 15, 2005.

ADDRESSES: Please submit nominations to Ms. Margaret Phillips, National Institute of Standards and Technology, 100 Bureau Drive, Mail Stop 4800, Gaithersburg, MD 20899–4800. Nominations may also be submitted via FAX to 301–963–6556.

Additional information regarding the Board, including its charter and current membership list may be found on its electronic home page at: *http://www.mep.nist.gov/index-nist.html*.

FOR FURTHER INFORMATION CONTACT: Ms. Margaret Phillips, National Institute of Standards and Technology, 100 Bureau Drive, Mail Stop 4800, Gaithersburg, MD 20899–4800; telephone 301–975–4350, fax 301–963–6556; or via email at *margaret.phillips@nist.gov*.

SUPPLEMENTARY INFORMATION: The Board will advise the Director of the National Institute of Standards and Technology (NIST) on MEP programs, plans, and policies.

The Board will consist of eleven individuals appointed by the Director of the National Institute of Standards and Technology (NIST) under the advisement of the Director of MEP. Membership on the Board shall be balanced to represent the views and needs of customers, providers, and others involved in industrial extension throughout the United States.

The Board will function solely as an advisory body, in compliance with the provisions of the Federal Advisory Committee Act.

Authority: Federal Advisory Committee Act: 5 U.S.C. App.2 and General Services Administration Rule: 41 CFR subpart 101–6.10.

Dated: July 22, 2005.

Hratch G. Semerjian,

Acting Director.

[FR Doc. 05–15024 Filed 7–28–05; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 072505B]

Caribbean Fishery Management Council; Public Meeting

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

ACTION: Notice of public meetings.

SUMMARY: The Caribbean Fishery Management Council (Council) and its Administrative Committee will hold meetings.

DATES: The meetings will be held on August 16 and 17, 2005. The Council will convene on Tuesday, August 16, 2005, from 9 a.m. to 5 p.m., and the Administrative Committee will meet from 5:15 p.m. to 6 p.m. The Council will reconvene on Wednesday, August 17, 2005, from 9 a.m. to 5 p.m., approximately.

ADDRESSES: The meetings will be held at The Buccaneer Hotel, Estate Shoys, Christiansted, St. Croix, USVI, 00824.

FOR FURTHER INFORMATION CONTACT: Caribbean Fishery Management Council, 268 Munoz Rivera Avenue, Suite 1108, San Juan, Puerto Rico 00918–1920, telephone (787) 766–5926.

SUPPLEMENTARY INFORMATION: The Council will hold its 119th regular public meeting to discuss the items contained in the following agenda:

August 16, 2005

9 a.m. – 5 p.m.

Call to Order
Election of Officers
Adoption of Agenda
Consideration of 118th Council Meeting
Verbatim Transcription
Executive Director's Report
Recognitions to:
- Mr. Robert McAuliffe
-U.S.V.I. Fishermen
-Mr. James Weaver
SFA Update and Discussion of Future Actions
Deep Water Corals Project Briefing
-Graciela Garcia-Moliner
Traps Studies – Ron Hill

5:15 p.m. – 6 p.m.

Administrative Committee Meeting
-AP/SSC/HAP Membership
-Budget 2004, 2005
-Other Business

August 17, 2005

9 a.m. – 5 p.m.

HMS Presentation
Enforcement Reports
-Puerto Rico
-US Virgin Islands
-NOAA
-US Coast Guard
Negotiating Panels
Administrative Committee Recommendations
Meetings attended by Council members and staff
Other Business
Next Council Meeting

The meetings are open to the public, and will be conducted in English. Fishers and other interested persons are invited to attend and participate with oral or written statements regarding agenda issues. Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. For more information or request for sign language interpretation and/other

auxiliary aids, please contact Mr. Miguel A. Rolon, Executive Director, Caribbean Fishery Management Council, 268 Munoz Rivera Avenue, Suite 1108, San Juan, Puerto Rico, 00918–2577, telephone (787) 766–5926, at least 5 days prior to the meeting date.

Dated: July 25, 2005.

Alan D. Risenhoover,

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

[FR Doc. E5–4028 Filed 7–28–05; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Prepare an Environmental Impact Statement (EIS) for the Proposed Extension of Kilo Wharf, Apra Harbor Naval Complex, Guam and To Announce Public Scoping Meetings

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: Pursuant to Section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969, as implemented by the Council on Environmental Quality regulations (40 CFR parts 1500–1508), the Department of the Navy (Navy) announces its intent to prepare an EIS to evaluate the potential environmental impacts associated with the proposed extension of Kilo Wharf located in the Apra Harbor Naval Complex, Guam to support the new T–AKE class multi-purpose dry cargo/ammunition ship.

The mission of Commander Navy Region Marianas (COMNAVREGMARIANAS) is to provide operational, fuel re-supply, ordnance, and other logistic support to Fleet units of the Pacific Region and operating forces of the Fifth (5th) and Seventh (7th) Fleets. Guam is the westernmost U.S. military installation on U.S. soil and is located 1,500 miles from the western rim of the Pacific. The location of Guam allows for rapid deployment of ammunition to areas of conflict in the Western Pacific Region. Because ocean transport is the most cost effective means of shipping ammunition, Guam must maintain a wharf that can efficiently accommodate modern ammunition ships. This project is required to improve COMNAVREGMARIANAS' capability to accomplish its mission.

The EIS will consider alternatives to expand or replace Kilo Wharf to meet the operational requirements of the T–AKE as well as the No Action alternative.

DATES: Public scoping meetings will be held in Santa Rita, Guam and Tumon Bay, Guam, to receive oral and/or written comments on environmental concerns that should be addressed in the EIS. The public meetings will be held on:

1. Tuesday, August 30, 2005, 6 p.m.–9 p.m., Guam Hilton, 202 Hilton Road, Tumon Bay, Guam 96913.

2. Wednesday, August 31, 2005, 6 p.m.–9 p.m., Santa Rita Community Center, 183 A. B. Wonpat Lane, Santa Rita, Guam 96915.

FOR FURTHER INFORMATION CONTACT: Ms. Nora Macariola-See, Code EV31NM, Naval Facilities Engineering Command, Pacific, 258 Makalapa Drive Suite 100, Pearl Harbor, HI 96860–3134, 808–472–1402, Fax 808–474–5419, E-mail at: *kiloeis@navy.mil*.

SUPPLEMENTARY INFORMATION: The Proposed Action is to provide adequate berthing facilities to support the new T–AKE multi-purpose ship. The purpose and need for the action is to ensure Kilo Wharf will continue to provide ammunition on-loading and off-loading capability in direct support of the Department of Defense strategic forward power projection and maintain the readiness posture of the Navy's operating forces in the Western Pacific Region.

Kilo Wharf was originally constructed to provide a facility for loading and unloading of ammunition to and from commercial and Navy ships. It has been and continues to be a critical infrastructure for the berthing of ammunition ships in the Western Pacific Region making port visits to Guam in support of the Navy's ordnance supply and readiness mission.

The T–AKE is a new multi-purpose Naval ship, which will replace the Kilauea Class (AE) ammunition ship, Marshall Class (AFS) supply ship, and Sacramento Class (AOE) combat logistic support ships by 2009. The T–AKE ships will load supplies from ports or at sea from commercial ships and will transfer these supplies at sea to the ships of the Navy's operating forces. The length of the existing Kilo Wharf, which is 400 feet, is not adequate to accommodate berthing of the T–AKE. The T–AKE is 689 feet in length, and would require 800 feet for adequate berthing. Other transient ships that utilize Kilo Wharf include certain logistic and surface combatant ships. The proposed extension or replacement of Kilo Wharf will provide for adequate berthing facilities to support the T-AKE. The increased length would also improve berthing support for transient ships that utilize the wharf.

The Navy will consider reasonable alternative configurations to expand or replace Kilo Wharf as well as the No Action alternative. Alternatives to be considered include: (1) Expand the wharf approximately 400 feet to the west; (2) Expand the wharf approximately 400 feet to the east; (3) Expand the wharf a total of 400 feet to the east and west; (4) Construct a new wharf approximately 800 feet in length inland from the existing wharf; (5) Construct a new wharf approximately 800 feet in length that is perpendicular to the existing wharf; and (6) No Action. All of the alternatives, except the No Action, would require dredging to install the new wharf caissons. A caisson is a pre-fabricated hollow concrete box with an open top. The caissons will be the foundation for the wharf's concrete deck. With Alternative 4, the existing wharf will be demolished and replaced with a new wharf. The volume of dredged materials for Alternatives 1, 2, and 3 is approximately 66,000 cubic yards. Alternative 4 would have more dredged materials while Alternative 5 would have less dredged materials. All alternatives may require temporary mooring islands to allow for ship berthing during construction. The temporary mooring islands will be removed when construction is completed. The EIS will evaluate the potential environmental impacts associated with the permanent extension or replacement of Kilo Wharf. Impact areas and issues to be addressed will include, but are not limited to, the following resource areas: Coral reefs, marine and terrestrial natural resources, including threatened and endangered species, water quality, fishing, navigation, recreation, historical/cultural, and socioeconomics. The EIS will include an evaluation of the project's direct, indirect, short-term, long term, and cumulative impacts. Construction for the project is anticipated to start by October 2007. The estimated date of construction completion, including dredging, is October 2010.

The Navy is initiating the scoping process to identify community concerns and issues that should be addressed in the EIS. Federal agencies, government of Guam agencies, the public, and other interested parties are encouraged to provide oral and/or written comments to the Navy to identify specific issues or topics of environmental concern for consideration in the EIS. The Navy will consider these comments in determining the scope of the EIS.

Written comments on the scope of the EIS should be submitted by September 9, 2005, and should be mailed to: Ms.

Nora Macariola-See, Code EV31NM, Naval Facilities Engineering Command, Pacific, 258 Makalapa Drive Suite 100, Pearl Harbor, HI 96860–3134, 808–472–1402, Fax 808–474–5419, E-mail at: *kiloeis@navy.mil*

Dated: July 25, 2005.

I.C. Le Moyne Jr.,

Lieutenant, Judge Advocate General's Corps, U.S. Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 05–15002 Filed 7–28–05; 8:45 am]

BILLING CODE 3810–FF–U

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before September 27, 2005.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) title; (3) summary of the collection; (4) description of the need for, and proposed use of, the information; (5) respondents and frequency of collection; and (6) reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: July 25, 2005.

Angela C. Arrington,

Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer.

Institute of Education Sciences

Type of Review: Revision.

Title: Common Core of Data Survey System.

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 114

Burden Hours: 12,040

Abstract: The Common Core of Data (CCD) is the National Center for Education Statistics' universe data collection for finance and non-finance information about public school districts and schools. Information is collected annually from school districts about the districts and their member schools including enrollment by grade, race/ethnicity, and gender. Information is also collected about students receiving various types of services such as English Language Learner services. The CCD also collects information about the occurrence of high school dropouts. Information about teachers and staffing is also collected.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 2829. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–245–6621. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Kathy Axt at her e-mail address *Kathy.Axt@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 05–14985 Filed 7–28–05; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education

SUMMARY: The Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before August 29, 2005.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Carolyn Lovett, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) title; (3) summary of the collection; (4) description of the need for, and proposed use of, the information; (5) respondents and frequency of collection; and (6)

reporting and/or recordkeeping burden. OMB invites public comment.

Dated: July 26, 2005.

Angela C. Arrington,

Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer.

Institute of Education Sciences

Type of Review: Reinstatement.

Title: Field Test Activities in 2005/2006 for the 2007–08 Schools and Staffing Survey and the 2008–09 Teacher Follow-up Survey Procedures.

Frequency: One time.

Affected Public: State, local, or tribal gov't, SEAs or LEAs; businesses or other for-profit; not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 7,229.

Burden Hours: 5,058.

Abstract: The National Center for Education Statistics (NCES) will use the field test to assess data collection procedures that are planned for the next full-scale Schools and Staffing Survey (SASS) and Teacher Follow-up Survey (TFS). Policymakers, researchers and practitioners at the national, state and local levels use SASS data which are representative at the national and state levels. Respondents include public and private school principals, teachers and school and LEA staff persons.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 2781. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–245–6623. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Kathy Axt at her e-mail address *Kathy.Axt@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 05–15039 Filed 7–28–05; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–513–000]

CenterPoint Energy Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

July 21, 2005.

Take notice that on July 18, 2005, CenterPoint Energy Gas Transmission Company (CEGT) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing, to be effective September 1, 2005.

CEGT states that the purpose of this filing is to make various tariff changes, including related to generic discount conditions, the extension of service agreements, and right-of-first-refusal procedures. Additionally, CEGT seeks to remove certain outdated provisions, and make certain clarifications and ''housekeeping'' changes.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–4037 Filed 7–28–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER05–1104–000]

Central Vermont Public Service Corporation; Notice of Issuance of Order

July 21, 2005.

Central Vermont Public Service Corporation (Central Vermont) filed an application for market-based rate authority, with an accompanying rate tariff. The proposed rate tariff provides for the sales of capacity and energy at market-based rates. Central Vermont also requested waiver of various Commission regulations. In particular, Central Vermont requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Central Vermont.

On July 20, 2005, pursuant to delegated authority, the Director, Division of Tariffs and Market Development—South, granted the request for blanket approval under part 34. The Director's order also stated that the Commission would publish a separate notice in the Federal Register establishing a period of time for the filing of protests. Accordingly, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Central Vermont should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. 18 CFR 385.211, 385.214 (2004).

Notice is hereby given that the deadline for filing motions to intervene or protest is August 19, 2005. Absent a request to be heard in opposition by the deadline above, Central Vermont is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or

assumption is for some lawful object within the corporate purposes of Central Vermont, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Central Vermont issuances of securities or assumptions of liability.

Copies of the full text of the Director's Order are available from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at *http://www.ferc.gov,* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number filed to access the document. Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. E5–4040 Filed 7–28–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

July 20, 2005.

Take notice that the following application has been filed with the Commission and is available for public inspection. This notice is being issued to clarify Items a. and l. of the June 29, 2005 notice.

a. *Application Type:* Transfer of Project Lands and Acquisition of Lands.

b. *Project No:* 2192–022.

c. *Date Filed:* May 24, 2005.

d. *Applicant:* Consolidated Water Power Company.

e. *Name of Project:* Biron.

f. *Location:* The project is located on the Wisconsin River in Wood County, Wisconsin.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791 (a) 825(r) and 799 and 801.

h. *Applicant Contact:* Mr. Mike Scheirer, Consolidated Water Power Company, PO Box 8050, Wisconsin Rapids, Wisconsin 54495–8050. Phone: (715) 422–3927.

i. *FERC Contact:* Any questions on this notice should be addressed to Mrs. Patricia Grant at 312/596–4435, or e-mail address: *patricia.grant@ferc.gov.*

j. *Deadline for filing comments and or motions:* August 22, 2005.

k. All documents (original and eight copies) should be filed with: Ms. Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426. Please include the project number (P–2192–022) on any comments or motions filed. Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the e-Filing link. The Commission strongly encourages e-filings.

l. *Description of Request:* The licensee filed a request for approval to exchange approximately 3.14 acres of licensee-owned lands with 3,000 linear feet of shoreline along the Biron flowage, for three different parcels of land totaling approximately 205.213 total acres. The first parcel has 830 linear feet of river shoreline and consists of 47.546 acres. The second parcel has 126 linear feet of river shoreline and consists of 2.960 acres, abutting an existing licensee-owned boat launch. The third parcel consists of islands in the river, peninsulas, and a roadside access totaling 154.84 acres (48.82 acres above water). These island perimeters, peninsulas, and the roadside access total 33,749 linear feet of waterfront. All lands are currently within the project boundary, and the licensee intends to retain flowage rights over any transferred lands, and to retain all lands within the project boundary.

m. *Location of the Application:* This filing is available for review at the Commission in the Public Reference Room 888 First Street, NE., Room 2A, Washington, DC 20426 or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''E-Library'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov.* For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

n. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

o. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

p. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

q. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. E5–4044 Filed 7–28–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER05–876–000 and ER05–876–001]

Direct Energy Services, LLC; Notice of Issuance of Order

July 21, 2005.

Direct Energy Services, LLC (DES) filed an application for market-based rate authority, with an accompanying rate tariff. The proposed rate tariff provides for the sales of capacity and energy at market-based rates. DES also requested waiver of various Commission regulations. In particular, DES requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by DES.

On July 20, 2005, pursuant to delegated authority, the Director,

Division of Tariffs and Market Development—South, granted the request for blanket approval under part 34. The Director's order also stated that the Commission would publish a separate notice in the **Federal Register** establishing a period of time for the filing of protests. Accordingly, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by DES should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. 18 CFR 385.211, 385.214 (2004).

Notice is hereby given that the deadline for filing motions to intervene or protest is August 19, 2005. Absent a request to be heard in opposition by the deadline above, DES is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of DES, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of DES issuances of securities or assumptions of liability.

Copies of the full text of the Director's Order are available from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at *http://www.ferc.gov*, using the eLibrary link. Enter the docket number excluding the last three digits in the docket number filed to access the document. Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. E5–4031 Filed 7–28–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–514–000]

Dominion Cove Point LNG, LP; Notice of Proposed Changes in FERC Gas Tariff

July 21, 2005.

Take notice that on July 19, 2005, Dominion Cove Point LNG, LP (Cove Point) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets, to become effective August 18, 2005:

Second Revised Sheet No. 1
Second Revised Sheet No. 217
Second Revised Sheet No. 220
Third Revised Sheet No. 475

Cove Point states that the purpose of the filing is to update the tariff sheets currently on file with the Commission. Cove Point states that it is filing the above-referenced tariff sheets to correct outdated or omitted references and typographical errors and no substantive changes have been made to the above-referenced tariff sheets.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–4038 Filed 7–28–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application and Soliciting Comments, Motions To Intervene, and Protests

July 20, 2005.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Shoreline Management Plan.

b. *Project No:* 2009–042.

c. *Date Filed:* April 1, 2005.

d. *Applicant:* Virginia Electric Power Company, d/b/a Dominion North Carolina Power (Dominion).

e. *Name of Project:* Roanoke Rapids and Gaston Hydroelectric Project.

f. *Location:* The project is located on the Roanoke River, near the town of Roanoke Rapids, North Carolina, in Brunswick and Mecklenburg Counties, Virginia, and Northampton, Halifax and Warren Counties, North Carolina. No federal lands are occupied by the project works or located within the project boundary.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Jim Thornton, Innsbrook Technical Center, 5000 Dominion Boulevard, Glen Allen, VA 23060, (804) 273–3257.

i. *FERC Contact:* Any questions on this notice should be addressed to Isis Johnson at (202) 502–6346, or by e-mail: *isis.johnson@ferc.gov*.

j. *Deadline for filing comments and/or motions:* August 22, 2 005.

All documents (original and eight copies) should be filed with: Ms. Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, DHAC, PJ–12.1, 888 First Street, NE., Washington DC 20426. Please include the project number (2009–042) on any comments or motions filed. Comments, protests and interventions may be filed

electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

k. *Description of Proposal:* Dominion, licensee for the Roanoke Rapids and Gaston Project, submitted a Shoreline Management Plan (SMP) as required by the project license. The SMP was developed to address issues that have surfaced as the result of development along Dominion's project shoreline, and is intended to protect and enhance the natural resources of the project, while encouraging economic development and protecting the lake qualities that are appealing to the public. The SMP address issues related to residential shoreline growth, protection of wildlife and fishery habitat, recreational access to the lakes and water quality.

l. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or call toll-free 1–866–208–3676, or for TTY, call (202) 502–8659.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. E5–4043 Filed 7–28–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–383–066]

Dominion Transmission, Inc.; Notice of Negotiate Rate

July 22, 2005.

Take notice that on July 20, 2005, Dominion Transmission, Inc. (DTI) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, to become effective August 1, 2005:

First Revised Sheet No. 1415
Fourth Revised Sheet No. 1416

DTI states that the purpose of this filing is to report a new negotiated rate transaction with Dominion Field Services, Inc., as pool operator for Penn Virginia Oil & Gas Corporation (Penn Virginia). DTI further states that it proposes to amend a previously reported negotiated rate transaction to reflect DFS as the pool operator for Penn Virginia.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–4047 Filed 7–28–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–632–018]

Dominion Transmission, Inc.; Notice of Report of Refunds

July 22, 2005.

Take notice that on July 20, 2005, Dominion Transmission, Inc. (DTI) tendered for filing a report of refunds that DTI will flow through to its affected customers on August 1, 2005 by crediting their July 2005 storage reservation invoices.

DTI states that the purpose of this filing is to report the refunds that resulted from the over-collection of the Storage Amortization Adder pursuant to the terms of section 16.3 of the GT&C during the period May 28, 2005 through May 31, 2005.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed on or before the date as indicated below. Anyone filing a protest must serve a copy of that

document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on July 29, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–4057 Filed 7–28–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–13–021]

East Tennessee Natural Gas, LLC; Notice of Negotiate Rate

July 21, 2005.

Take notice that on July 18, 2005, East Tennessee Natural Gas, LLC (East Tennessee) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, First Revised Sheet No. 394, to become effective on May 1, 2005.

East Tennessee makes this filing to seek approval for a negotiated rate agreement and tariff sheet that reflect the renegotiation of a negotiated rate transaction approved with conditions by the Commission on November 26, 2004. Contemporaneously herewith, East Tennessee is making a compliance filing that complies with the November 26, 2004 order and the subsequent June 16, 2005 order in that proceeding.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–4029 Filed 7–28–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–13–020]

East Tennessee Natural Gas, LLC; Notice of Compliance Filing

July 21, 2005.

Take notice that on July 18, 2005, East Tennessee Natural Gas, LLC (East Tennessee) submitted a compliance filing pursuant to the Commission's June 16, 2005 order in the above-captioned docket.

East Tennessee states that copies of the filing were served on parties on the official service list in the above-captioned proceeding, as well as all customers and interested state commissions.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–4039 Filed 7–28–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL05–135–000]

Entergy Arkansas, Inc.; Petition for Declaratory Order

July 22, 2005.

Take notice that on July 20, 2005, Entergy Arkansas, Inc. (EAI) pursuant to Rule 207 of the Rules and Regulations of the Commission, 18 CFR 385.207, tendered for filing a Petition for Declaratory Order in the above captioned docket.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the

Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on August 17, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–4053 Filed 7–28–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP04–386–000, CP04–400–000, CP04–401–000, and CP04–402–000]

Golden Pass LNG Terminal L.P. and Golden Pass Pipeline L.P.; Notice of Availability of the Final Conformity Determination for the Golden Pass LNG Terminal and Pipeline Project

July 20, 2005.

The staff of the Federal Energy Regulatory Commission has prepared a Final General Conformity Determination to assess the potential air quality impacts associated with the construction and operation of a liquefied natural gas (LNG) import terminal and natural gas pipeline proposed by Golden Pass LNG Terminal, L.P. (Golden Pass LNG) and Golden Pass Pipeline, L.P. (Golden Pass Pipeline) referred to as the Golden Pass LNG Terminal and Pipeline Project, in the above-referenced dockets.

This Final General Conformity Determination was prepared to satisfy the requirements of the Clean Air Act.

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208–FERC or on the FERC Internet Web site (*http://www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, contact (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–4046 Filed 7–28–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP04–386–000, CP04–400–000, CP04–401–000, and CP04–402–000]

Golden Pass LNG Terminal L.P.; Notice of Availability of The Final Conformity Determination for The Golden Pass Lng Terminal and Pipeline Project Golden Pass Pipeline L.P.

July 22, 2005.

The staff of the Federal Energy Regulatory Commission has prepared a Final General Conformity Determination to assess the potential air quality impacts associated with the construction and operation of a liquefied natural gas (LNG) import terminal and natural gas pipeline proposed by Golden Pass LNG Terminal, L.P. (Golden Pass LNG) and Golden Pass Pipeline, L.P. (Golden Pass Pipeline) referred to as the Golden Pass LNG Terminal and Pipeline Project, in the above-referenced dockets.

This Final General Conformity Determination was prepared to satisfy the requirements of the Clean Air Act.

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208–FERC or on the FERC Internet website (*http://www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, contact (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–4049 Filed 7–28–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP04–386–000, Docket Nos. CP04–400–000, CP04–401–000, and CP04–402–000]

Golden Pass LNG Terminal L.P. , Golden Pass Pipeline L.P.; Notice of Availability of The Final Conformity Determination for the Golden Pass LNG Terminal And Pipeline Project

July 20, 2005.

The staff of the Federal Energy Regulatory Commission has prepared a Final General Conformity Determination to assess the potential air quality impacts associated with the construction and operation of a liquefied natural gas (LNG) import terminal and natural gas pipeline proposed by Golden Pass LNG Terminal, L.P. (Golden Pass LNG) and Golden Pass Pipeline, L.P. (Golden Pass Pipeline) referred to as the Golden Pass LNG Terminal and Pipeline Project, in the above-referenced dockets.

This Final General Conformity Determination was prepared to satisfy the requirements of the Clean Air Act.

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208–FERC or on the FERC Internet website (*http://www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, contact (202)502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–4069 Filed 7–28–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP05–71–001]

Gulf South Pipeline Company, LP; Notice of Cancellation of Rate Schedules

July 22, 2005.

Take notice that effective on June 20, 2005, the following rate schedules, part of the Gulf South Pipeline Company, LP (Gulf South) Original Volume No. 2 FERC Gas Tariff, are to be cancelled:

Original Volume No.2

Rate Schedule X–18 consisting of Original Sheet Nos. 109–116
Rate Schedule X–51 consisting of Original Sheet Nos. 498–501
Rate Schedule X–55 consisting of Original Sheet Nos. 518–520
Rate Schedule X–61 consisting of Original Sheet Nos. 547–550
Rate Schedule X–146 consisting of First Revised Sheet No. 1926
Original Sheet No. 1927
Substitute Original Sheet No. 1928
Original Sheet Nos. 1929–1930
First Revised Sheet Nos. 1931–1935
Original Sheet Nos. 1936–1944
First Revised Sheet Nos. 1945–1946
Rate Schedule X–148 consisting of Original Sheet Nos. 1968–1981
Rate Schedule X–170 constituting Original Sheet Nos. 2443–2457

Gulf South and Transcontinental Gas Pipe Line Corporation state that onFebruary 15, 2005, filed a joint application pursuant to section 7(b) of the Natural Gas Act (NGA), as amended, for an order permitting and approving abandonment of certain transportation and exchange services.

Gulf South states that copies of this filing have been served upon all parties to the proceeding.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed on or before the date as indicated below. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on August 12, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–4050 Filed 7–28–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No.EL05–134–000]

Indiana Municipal Power Agency; Notice of Filing

July 22, 2005.

Take notice that on July 15, 2005, the Indiana Municipal Power Agency (IMPA) tendered for filing a rate schedule pursuant to which it specifies its revenue requirement for providing cost-based reactive supply and voltage control from generation sources service (Reactive Power Service). IMPA states it will provide Reactive Power Service from its two combustion turbine units at the Georgetown Plant in the control area administered by the Midwest Independent Transmission System Operator, Inc.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on August 5, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–4052 Filed 7–28–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP03–604–004 and RP05–70–003]

Northern Natural Gas Company; Notice of Compliance Filing

July 21, 2005.

Take notice that on May 5, 2005, Northern Natural Gas Company (Northern) tendered for filing new letter agreements and contract amendments to comply with the Commission's Order on Rehearing and Clarification and on Compliance Filing, issued on April 20, 2005, in Docket Nos. RP03–604–002, RP03–604–003, RP05–70–001, andRP05–70–002. (111 FERC ¶ 61,108 (2005)).

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed on or before the date as indicated below. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu

of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on July 28, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–4034 Filed 7–28–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–370–001]

Northern Natural Gas Company; Notice of Compliance Filing

July 21, 2005.

Take notice that on July 15, 2005, Northern Natural Gas Company (Northern) tendered for filing to become part of its FERC Gas Tariff, Fifth Revised Volume No. 1, Substitute Second Revised Sheet No. 212 and Substitute Third Revised Sheet No. 309, with an effective date of July 5, 2005.

Northern states that it is filing the above-referenced tariff sheets in compliance with the Commission's July 1, 2005 Order that provides for the negotiation of gas quality management at delivery points.

Northern further states that copies of the filing have been mailed to each of its customers and interested State Commissions.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–4035 Filed 7–28–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–512–000]

Northwest Pipeline Corporation; Notice of Proposed Changes in FERC Gas Tariff

July 21, 2005.

Take notice that on July 18, 2005, Northwest Pipeline Corporation (Northwest) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Second Revised Sheet No. 4, to be effective August 18, 2005.

Northwest states that the purpose of this filing is to update its system map to reflect two new pools and to eliminate the listing of the receipt points associated with the pools on the map.

Northwest states that a copy of this filing has been served upon Northwest's customers and interested state regulatory commissions.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–4036 Filed 7–28–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RM96–1–026 and RP05–511–000]

Oktex Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

July 20, 2005.

Take notice that on July 15, 2005, OkTex Pipeline Company (OkTex), filed substitute tariff sheets in compliance with the Commission's directives in Docket No. RM96–1–026.

OkTex states that the tariff sheets reflect the changes to OkTex's tariff that result from the North American Standards Board's (NAESB) consensus standards that were adopted by the

Commission in its May 9, 2005 Order No. 654 in Docket No. RM96–1–026. OkTex further states that it will implement the NAESB consensus standards for September 1, 2005 business, and that the revised tariff sheets therefore reflect an effective date of September 1, 2005.

OkTex states that copies of the filing have been mailed to all affected customers and state regulatory commissions.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–4041 Filed 7–28–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP01–69–008]

Petal Gas Storage, L.L.C.; Notice of Compliance Filing

July 22, 2005.

Take notice that on July 1, 2005, Petal Gas Storage, L.L.C. (Petal), tendered for filing a cost and revenue study. Petal states that the purpose of the filing is to comply with Ordering Paragraph (C)(2) of the certificate order issued by the Commission on October 25, 2001, in Docket Nos. CP01–69–000, et al.

Petal states that copies of its filing have been mailed to all customers, state commissions, and other interested parties.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed on or before the date as indicated below. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on August 12, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–4048 Filed 7–28–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 400–043—Colorado and 12589–000—Colorado]

Public Service Company of Colorado Notice of Intent To File License Application, Filing of Pre-Application Document (Pad), Solicitation of Comments on the Pad and Scoping Document, Solicitation of Study Requests, and Commencement of Proceeding

July 21, 2005.

a. *Type of Filing:* Notice of Intent to File License Application for a New License and Pre-Application Document; Commencing Licensing Proceeding.

b. *Project No.:* 400–043 and 12589–000.

c. *Dated Filed:* May 20, 2005.

d. *Submitted By:* Public Service Company of Colorado.

e. *Name of Project:* Tacoma Hydroelectric Project No. 12589 and Ames Hydroelectric Project No. 400.

f. *Location:* The Tacoma Hydroelectric Project is located on Cascade Creek, Little Cascade Creek and Elbert Creek in La Plata and San Juan Counties, Colorado. The Tacoma Project occupies lands of the San Juan National Forest.

The Ames Hydroelectric Project is located on the Lake Fork and Howard Fork tributaries of the South Fork of the San Miguel River, in San Miguel County, Colorado. The Ames Project occupies lands of the Uncompahgre National Forest.

g. *Filed Pursuant to:* 18 CFR part 5 of the Commission's Regulations.

h. *Potential Applicant Contact:* Alfred Hughes; Supervisor, Hydro West; Xcel Energy; P.O. Box 8098, Durango, Colorado 81301; (970) 247–8363.

i. *FERC Contact:* David Turner (202) 502–6091 or via e-mail at *david.turner@ferc.gov*.

j. We are asking Federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues to cooperate with us in the preparation of the environmental document. Agencies who would like to request cooperating status should follow the instructions for filing comments described in paragraph p below.

k. With this notice, we are initiating informal consultation with: (a) The U.S. Fish and Wildlife Service under section 7 of the Endangered Species Act and the joint agency regulations thereunder at 50 CFR part 402 and (b) the State Historic Preservation Officer, as required by section 106, National

Historical Preservation Act, and the implementing regulations of the Advisory Council on Historic Preservation at 36 CFR 800.2.

l. By this notice, we designate Public Service Company of Colorado as the Commission's non-federal representative for carrying out informal consultation, pursuant to section 7 of the Endangered Species Act and section 106 of the National Historic Preservation Act.

m. Public Service Company of Colorado filed a Pre-Application Document (Pad) for the Tacoma Project and one for the Ames Project, including a proposed process plan and schedule with the Commission, pursuant to 18 CFR 5.6 of the Commission's regulations. Public Service Company of Colorado is seeking a separate license for each development; both are currently licensed to Public Service Company of Colorado under the Tacoma-Ames Project No. 400.

n. We issued Scoping Document 1 and a notice of scoping and site visits on July 13, 2005. The scoping meetings for the Tacoma Project will be held August 9, 2005 from 7 p.m. to 9 p.m. and on August 10, 2005 from 9 a.m. to 3 p.m. at the Doubletree Hotel Durango, 501 Camino del Rio, Durango, Colorado. We will also hold a Tacoma Project site visit on August 9 starting at 12 p.m. from the Electra Lake Sporting Club parking lot. The scoping meeting for the Ames Project will held on August 11 from 7 p.m. to 9 p.m. and on August 12 from 9 a.m. to 3 p.m. at the Telluride Conference Center, 580 Mountain Boulevard, Telluride, Colorado. An Ames Project site visit will occur on August 12; meet at the Public Service Company of Colorado recreation facilities on Trout Lake at 8:30 a.m. Those interested in participating in the site visit must notify Alfred Hughes at (970) 247–8363 by August 1, 2005.

o. Copies of the Pads and Scoping Document 1 (SD1) are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site (*http://www.ferc.gov*), using the ''eLibrary'' link. Enter the docket number, excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCONlineSupport@ferc.gov* or toll free at 1–866–208–3676, of for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in paragraph h.

Register online at *http://ferc.gov/esubscribenow.htm* to be notified via e-mail of new filing and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

p. With this notice, we are soliciting comments on the Pads and SD1 as well as study requests. All comments on the Pad and SD1, and study requests should be sent to the address above in paragraph h. In addition, all comments on the Pads and SD1, study requests, requests for cooperating agency status, and all communications to Commission staff related to the merits of the potential application (original and eight copies) must be filed with the Commission at the following address: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. All filings with the Commission relevant to the Tacoma Hydroelectric Project must include on the first page, the project name, (Tacoma Hydroelectric Project) and number (P–12589–000), and bear the heading, as appropriate, ''Comments on Pre-Application Document,'' ''Study Requests,'' ''Comments on Scoping Document 1,'' ''Request for Cooperating Agency Status,'' or ''Communications to and from Commission Staff.'' All filings with the Commission relevant to the Ames Project must include on the first page, the project name (Ames Hydroelectric Project) and number (P–400–043) on the first page, and the appropriate heading as noted earlier. Any individual or entity interested in submitting study requests, commenting on the Pad or SD1, and any agency requesting cooperating status must do so by September 20, 2005.

All study requests must address the seven criteria, pursuant to 18 CFR 5.9(b) of the Commission's regulations.

Comments on the Pad and SD1, study requests, requests for cooperating agency status, and other permissible forms of communications with the Commission may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-filing'' link.

At this time, Commission staff intends to prepare a single Environmental Assessment for the project, in accordance with the National Environmental Policy Act.

Magalie R. Salas,

Secretary.

[FR Doc. E5–4033 Filed 7–28–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

July 20, 2005.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Amendment to the Project License.

b. *Project No:* 2290–067.

c. *Date Filed:* June 24, 2005.

d. *Applicant:* Southern California Edison Company (Edison).

e. *Name of Project:* Kern River No. 3 Project.

f. *Location:* The project is located on the North Fork of the Kern River and on Salmon and Corral Creeks in Tulare and Kern Counties, California.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Ms. Terri Loun, Southern California Edison Company, 300 No. Lone Hill Ave. San Dimas, CA 91773–1741, (909) 394–8717.

i. *FERC Contact:* Any questions on this notice should be addressed to Mr. Robert Shaffer at (202) 502–8944, or e-mail address: *Robert.Shaffer@ferc.gov*.

j. *Deadline for filing comments and or motions:* August 22, 2005.

k. *Description of Request:* Edison filed an amendment application that proposes to add two power lines, four power poles, and a gaging station site to the project license. The acreage of federal lands encompassed by the project will increase by 0.62.

l. Locations of the Application: A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, D.C. 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*, for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should

so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. E5–4045 Filed 7–28–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP05–71–002]

Transcontinental Gas Pipe Line Corporation; Notice of Compliance Filing

July 22, 2005.

Take notice that on July 1, 2005, Transcontinental Gas Pipe Line Corporation (Transco) submitted a compliance filing pursuant to the Commission's order issued June 20, 2005, in Docket No. CP05–71. Such filing removes Transco's Rate Schedules X–43, X–61, X–64, X–73, X–76, X–159, X–235, X–238, X–239, and X–280 from Transco's Original Volume No. 2 FERC Gas Tariff.

Transco states that copies of the filing were served on parties on the official service list in the above-captioned proceeding.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed on or before the date as indicated below. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on August 12, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–4051 Filed 7–28–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER05–810–000 and ER05–810–001]

UGI Energy Services, Inc.; Notice of Issuance of Order

July 21, 2005.

UGI Energy Services, Inc. (UGI Energy) filed an application for market-based rate authority, with an accompanying rate tariff. The proposed rate tariff provides for the sales of capacity and energy at market-based rates. UGI Energy also requested waiver of various Commission regulations. In particular, UGI Energy requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by UGI Energy.

On July 20, 2005, pursuant to delegated authority, the Director, Division of Tariffs and Market Development—South, granted the request for blanket approval under Part 34. The Director's order also stated that the Commission would publish a separate notice in the **Federal Register** establishing a period of time for the filing of protests. Accordingly, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by UGI Energy should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. 18 CFR 385.211, 385.214 (2004).

Notice is hereby given that the deadline for filing motions to intervene or protest is August 19, 2005.

Absent a request to be heard in opposition by the deadline above, UGI Energy is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of UGI Energy, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of UGI Energy issuances of securities or assumptions of liability.

Copies of the full text of the Director's Order are available from the

Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at *http://www.ferc.gov*, using the eLibrary link. Enter the docket number excluding the last three digits in the docket number filed to access the document. Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. E5–4030 Filed 7–28–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OR05–8–000]

BP Exploration (Alaska) Inc. and BP Oil Supply Company, Complainants, v. ConocoPhillips Transportation Alaska, Inc.; Respondent; Notice of Complaint; Request for Fast TRACK Processing

July 20, 2005.

Take notice that on June 30, 2005, BP Exploration (Alaska) Inc. and BP Oil Supply Company (collectively, BP) filed a Complaint against ConocoPhillips Transportation Alaska Inc. (ConocoPhillips) pursuant to section 13(1) of the Interstate Commerce Act, 49 U.S.C. 13(1), 18 CFR 343.2(c), Rule 206 of the Commission's Rules of Practice and Procedures, 18 CFR 395.206(2004). BP requests that the Commission stay the effective date of ConocoPhillips' revised proration policy. If the policy is already effective, BP requests that the Commission stay further effectiveness of such proration policy pending a determination as to the lawfulness of such proration policy, and order ConocoPhillips to make reparation to BP for any financial damage BP may suffer as a result of ConocoPhillips' revised proration policy. BP requested fast track processing of the Complaint. Subsequently the parties began settlement discussions, and requested that the time for answers and comments be extended to August 1, 2005.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all parties to this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, D.C. There is an ''eSubscription'' link on the web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on August 1, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–4042 Filed 7–28–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1962–113]

Pacific Gas and Electric Company; Notice Dismissing Complaint

July 22, 2005.

1. On May 31, 2005, the Anglers Committee (Anglers) filed a complaint against Pacific Gas and Electric Company (PG&E), licensee for the Rock Creek-Cresta Project No. 1962, located on the North Fork Feather River in Butte and Plumas Counties, California.[1] On June 21, 2005, PG&E filed an answer to the complaint. On July 13, 2005, Anglers filed a rebuttal to PG&E's answer.

2. The Anglers contend that the Ecological Resource Committee (Committee), created by the licensee,[2] will not allow the public to participate in the meetings (other than to attend and listen) and to have access to Committee documents. The Anglers request that the Commission require PG&E to establish requirements and proceedings for Committee meetings to provide public participation in all matters and access to Committee documents.

3. The Commission's regulations provide that a complaint may be filed seeking Commission action against any person alleged to be ''in contravention or violation of any statute, rule, order, or other law administered by the Commission or for any other alleged wrong over which the Commission may have jurisdiction.'' [3] The regulations further provide that the complaint must [c]learly identify the action or inaction which is alleged to violate applicable statutory standards or regulatory requirements.'' [4]

4. The license does not establish Committee procedures. Nor does it require public participation in Committee matters.[5] Since the complainants do not allege that PG&E is in violation of its license, the Federal Power Act, or the Commission's regulations, the complaint is dismissed.

Magalie Salas,

Secretary.

[FR Doc. E5–4056 Filed 7–28–05; 8:45 am]

BILLING CODE 6717–01–P

[1] The Commission issued PG&E a new license for the Rock Creek-Cresta Project and approved a settlement agreement resolving various project-related issues on October 24, 2001. 97 FERC ¶ 61,084 (2001).

[2] Appendix Condition No. 22 of the license required PG&E to establish the Committee in coordination with the parties to the Settlement Agreement for the purpose of assisting the licensee in the design of monitoring plans, review and evaluation of data, and preparation of adaptive management measures for implementation by the licensee as provided in the Settlement Agreement.

The Anglers previously participated in settlement discussions regarding the relicensing of the project but, as stated in their complaint, they chose not to become signatories to the Settlement Agreement because of their disagreement with certain terms and conditions in the agreement. Members of the Committee are limited to the Settlement Agreement signatories.

[3] *See* 18 CFR 385.206(a)(2005).

[4] *Id.*

[5] However, any material changes in project operations during the term of the license will require a license amendment application, public notice, and a proceeding in which interested entities will have an opportunity to participate.

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Battle Creek Salmon and Steelhead Restoration Project, Tehama and Shasta Counties, CA

AGENCIES: Bureau of Reclamation, Interior; Federal Energy Regulatory Commission, DOE.

ACTION: Notice of availability of the Final Environmental Impact Statement/Environmental Impact Report.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969 (NEPA) and Public Resources Code, sections 21000–21177 of the California Environmental Quality Act (CEQA), the Bureau of Reclamation (Reclamation), the lead Federal agency; the Federal Energy Regulatory Commission (FERC), a cooperating Federal agency; and the California State Water Resources Control Board (State Water Board), the lead State agency; have prepared a joint Final Environmental Impact Statement/Environmental Impact Report (Final EIS/EIR) for the Battle Creek Salmon and Steelhead Restoration Project (Restoration Project). The Restoration Project proposed action considered by the lead agencies is the five-dam removal alternative that includes the decommissioning and removal of five small hydropower diversion dams, construction of new fish screens at the intakes and fish ladders at three other dams, and the modification of several hydropower facilities to ensure continued hydropower operations. This action will require a FERC license amendment of the Battle Creek Hydroelectric Project, owned and operated by Pacific Gas and Electric Company (PG&E).

DATES: No decision will be made on the proposed action until 30 days after the release of the Final EIS/EIR. After the 30-day waiting period, Reclamation and the State Water Board will complete their respective Record of Decision (ROD) and CEQA Findings. The ROD and CEQA Findings will identify the recommended action to be implemented including any measures found necessary to avoid, reduce or mitigate any significant adverse project effects to less than significant. FERC will then make its own independent decision regarding the proposed Battle Creek Hydroelectric Project license amendment and any measures it may find necessary to avoid, reduce or mitigate any significant adverse project effects.

ADDRESSES: Requests for a compact disk or a bound copy of the Final EIS/EIR should be addressed to Ms. Rosemary Stefani, Bureau of Reclamation, 2800 Cottage Way, Sacramento, CA 95825, telephone: (916) 978–5309, TDD (916) 978–5608, or e-mail: *rstefani@mp.usbr.gov*. The final EIS/EIR is available online at *http://www.usbr.gov/mp/battlecreek/documents.html*.

FOR FURTHER INFORMATION CONTACT: Ms. Mary Marshall, Bureau of Reclamation, 2800 Cottage Way, Sacramento, CA 95825, telephone: (916) 978–5248, TDD (916) 978–5608, e-mail: *mmarshall@mp.usbr.gov*; or Mr. Jim Canaday, California State Water Resources Control Board, 1001 I Street, Sacramento, CA 95814, telephone: (916) 341–5308, e-mail: *jcanaday@waterboards.ca.gov*.

SUPPLEMENTARY INFORMATION: The proposed Restoration Project is to restore approximately 48 miles of salmonid habitat in Battle Creek and its tributaries and to facilitate the safe passage for, and the growth and recovery of, naturally-produced anadromous fish populations, including three federally-listed runs: the Central Valley spring-run chinook salmon, the Central Valley steelhead trout, and the Sacramento River winter-run chinook salmon. The Restoration Project's proposed action (five-dam removal alternative) stems from the 1999 Memorandum of Understanding (MOU) to pursue a restoration project for Battle Creek that modifies both Battle Creek Hydroelectric Project facilities and water management operations, while at the same time minimizing loss of renewable energy produced. The MOU is signed by Reclamation, the U.S. Fish and Wildlife Service, National Marine Fisheries Service, the California Department of Fish and Game, and PG&E.

The Restoration Project Final EIS/EIR discusses the project purpose and need, project description, project background, and related projects. The Final EIS/EIR evaluates a ''No Action'' alternative and several action alternatives, which consist of various combinations of dam decommissioning and removals, fish screen/fish ladder improvements, and increased in-stream flows, and also describes the affected environment and environmental consequences of the Restoration Project alternatives. The proposed action (five-dam removal alternative) combines the decommissioning and removal of five small hydropower diversion dams and construction of new fish screens/ladders on another three dams, with modification of several hydropower facilities to ensure continued hydropower operations. The Final EIS/EIR addresses the impacts of project construction and operation on fisheries; botanical, wetland and wildlife resources; hydrology; water quality; groundwater; land use; geology and soils; aesthetics and visual resources; transportation; noise; air quality; public health and safety; public services and utilities; recreation; cultural resources; power generation and economics; socioeconomics; environmental justice; and Indian trust assets.

The Notice of Availability of the original joint Draft Environmental Impact Statement/Environmental Impact Report (Draft EIS/EIR), notice of public workshop, and notice of public hearing was published in the **Federal Register** on July 18, 2003. Two public information workshops and a public hearing were held on July 23 and August 12, and August 27, 2003, respectively; all meetings occurred in Manton, CA. A Draft Supplemental EIS/Revised EIR (Draft SEIS/REIR) was released on March 1, 2005 for a 60-day public review and comment period. Responses to all comments received from interested organizations and individuals on the Draft EIS/EIR and the Draft SEIS/REIR during the public review periods and at the public hearing are addressed in the Final EIS/EIR.

Copies of the Final EIS/EIR are available at the following locations:

- Tehama County Library, 645 Madison, Red Bluff, CA 96080, (530) 527–0604
- Shasta County Library, 1855 Shasta Street, Redding, CA 96001, (530) 225–5769
- Susanville Library, Lassen County, 1618 Main Street, Susanville, CA 96130, (530) 251–8127
- Bureau of Reclamation, Red Bluff Field Office, 22500 Altube Avenue, Red Bluff, CA 96080, (530) 529–3890
- Bureau of Reclamation, Office of Public Affairs, 2800 Cottage Way, Sacramento, CA 95825–1898, (916) 978–5100
- Bureau of Reclamation, Denver Office Library, Building 67, Room 167, Denver Federal Center, 6th and Kipling, Denver, CO 80225, (303) 445–2072
- Natural Resources Library, U.S. Department of the Interior, 1849 C Street NW., Main Interior Building, Washington, DC 20240–0001
- California State Water Resources Control Board, Division of Water Rights, 1001 I Street, 14th Floor, Sacramento, CA 95814, (916) 341–5300

Dated: May 19, 2005.

Kirk C. Rodgers,

Regional Director, Mid-Pacific Region, Bureau of Reclamation.

Dated: May 16, 2005.

Joseph D. Morgan,

Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission.

[FR Doc. 05–15013 Filed 7–28–05; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2105–095]

Pacific Gas & Electric Company; Notice of Availability of Environmental Assessment

July 21, 2005.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects' staff has prepared an Environmental Assessment (EA) for an application for a non-capacity related amendment of the Lake Almanor Development of the Upper North Fork Feather River Project. The Upper North Fork Feather River Project, FERC No. 2105, is located on the Butt Creek and North Fork Feather River in Plumas County, California.

The EA contains the staff's analysis of the potential environmental impacts of the proposal and concludes that approval of the proposal would not constitute a major federal action significantly affecting the quality of the human environment.

A copy of the EA is attached to a July 20, 2005, Commission order titled ''Order Approving Application for Amendment of License and Revised Exhibit K,'' which is available for review and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426. The EA may also be viewed on the Commission's website at *http://www.ferc.gov* using the ''elibrary'' link. Enter the docket number (prefaced by P-) and excluding the last three digits, in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

For further information, contact Rebecca Martin at (202) 502–6012.

Magalie R. Salas,

Secretary.

[FR Doc. E5–4032 Filed 7–28–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER05–795–001]

ISO New England Inc. and New England Power Pool; Notice of Technical Conference

July 22, 2005.

The Federal Energy Regulatory Commission hereby gives notice that members of its staff will hold a technical conference with ISO New England Inc. (ISO–NE) to discuss certain aspects of the ''Joint Request for Clarification, or in the Alternative, Rehearing; Request for Expedited Action; and Request for Deferral of Filing Requirements of ISO New England Inc. and New England Power Pool'' (Joint Request) filed on June 23, 2005 in Docket No. ER05–795–001.

The conference will take place on Thursday, July 28, 2005 from 8:30 a.m. to 9:30 a.m. (e.d.t.), in Room 3M–3 of the Federal Energy Regulatory Commission, 888 First St., NE., Washington DC 20426.

Specifically, the purpose of the conference is to discuss the mechanism for selecting generating units to provide Regulation Service as proposed in an April 7 filing, and how Regulation Clearing Prices would be established. The conference will also discuss any possible inconsistencies in the description of the mechanism as found in (i) the proposed Tariff revisions (especially section III.1.11.5 and section III.3.2.2), (ii) the Joint Request,[1] and (iii) the proposed revisions to the ISO–NE Manual for Market Operations, Manual M–11 (Revision XX—ASM Phase I), section 3 (especially section 3.2.5).[2]

During the conference, ISO–NE should be prepared to explain the proposed steps that would be taken to select generators to provide Regulation Service and to determine the Regulation Clearing Price. To aid in this discussion, Staff requests ISO–NE to use the hypothetical example described in the Appendix to this Notice to illustrate how Resources would be selected to provide Regulation Service and how the Regulation Clearing Price would be determined. ISO–NE should also be prepared to explain whether, under its proposal, the Resources selected to provide Regulation Service would be those whose total costs of providing Regulation Service are the lowest. In addition, ISO–NE should be prepared to discuss the rationale for recalculating updated Regulation Rank Prices for generating units with Regulation Offer Prices that are less than the initial Regulation Clearing Price, as described in section 3.2.5(2) of the proposed revision to Manual M–11.

The conference is open for the public to attend. In addition, a telephone line will be provided for interested parties to call in and participate in the conference. Below is the call-in information for the conference call:

Date: July 28, 2005.
Time: 8:30 a.m. to 9:30 a.m. e.d.t.
Toll-free Number: 877–546–1566.
Passcode: 65271.
Leader's Name: Mr. David Mead.

Parties interested in submitting comments following the conference must do so no later than August 11, 2005.

FERC conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations please send an e-mail to *accessibility@ferc.gov* or call toll free 1–866–208–3372 (voice) or 202–208–1659 (TTY), or send a FAX to 202–208–2106 with the required accommodations.

For more information about the conference, please contact: David Mead at (202) 502–8028 or *david.mead@ferc.gov.*

Magalie R. Salas,

Secretary.

Appendix

The following is a hypothetical example to be used during the technical conference to help illustrate how Resources would be selected to provide Regulation Service and how the Regulation Clearing Price would be determined.

Assume that 150 MW of Regulation Capability must be procured to provide Regulation Service for a particular hour. Assume that 6 different Resources, A through F, have submitted offers to provide Regulation Service. Each of the 6 Resources has an Automatic Response Rate of 10 MW per minute, and thus, a Regulation Capability of 50 MW (*i.e.,* 10 MW per minute times 5 minutes). Although each Resource has submitted a different Energy Bid (shown in

[1] The Joint Request (at 6–7) describes a 7-step process for determining the Resources that would be selected to provide Regulation Service and for determining the Regulation Clearing Price.

[2] The ISO–NE Manual for Market Operations has not been filed with the Commission. It may be found on the ISO–NE Web site at *http://www.iso-ne.com/rules_proceds/isone_mnls/M–11_Market%20Operations_(Revision%20XX)_10–01–05.doc.*

the table below), the Energy Bid of each Resource is constant over its entire operating range. The day-ahead and real-time LMP throughout New England during the hour in question is $70/MWh. None of the bids from the Resources has any start-up or minimum load costs. The Capability-to-Service Ratio used in calculating the Regulation Service Credit for each Resource is 0.1. (ISO–NE should comment during the conference whether it is reasonable to assume that the Capability-to-Service Ratio used in selecting Resources would be the same for all Resources.)

Assume that the 6 Resources submit the following in their bids to supply Regulation Service and Energy:

INFORMATION IN BIDS TO SUPPLY REGULATION SERVICE AND ENERGY AND DERIVED OPPORTUNITY COST, IN $/MWH

Resource	Regulation offer	Energy bid	Derived opportunity cost
A	$10	$85	$15
B	20	75	5
C	40	70	0
D	45	70	0
E	50	40	30
F	60	25	45

ISO–NE should be prepared to explain during the conference how its proposal would determine which of these Resources would be selected to provide Regulation Service, and how the Regulation Clearing Price would be determined. If additional information is also needed to determine which Resources are selected and what Regulation Clearing Price is calculated, ISO–NE should identify the information at the conference and add reasonable hypothetical values for this information to the above example.

[FR Doc. E5–4054 Filed 7–28–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD05–12–000]

Report on Generator Offers in the Midwest Independent Transmission System Operator Market Launch; Notice Inviting Comments on Staff Report

July 22, 2005.

The Commission is posting, and inviting comment upon, a staff report, ''Report on Generator Offers in the Midwest Independent Transmission System Operator Market Launch'' (Report). The Report presents information and staff conclusions related to generator supply offers made into the Midwest Independent Transmission System Operator (MISO) during the two months following the launch of the MISO Energy Markets, a period during which MISO market participants were required to offer supply into MISO at cost.

The purpose of this Notice is to solicit comment on the Report and, in particular, on staff's recommendations (contained in Section VI of the Report, Analysis and Observations) that may assist the Commission in the development of policies relating to the issues raised in the Report. The Report will be posted on the Commission's Web site at *http://www.ferc.gov.*

Comments on the Report should be filed within 30 days of the issuance of this Notice. The Commission encourages electronic submission of comments in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the comment to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

All filings in this docket are accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and will be available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Questions regarding this Notice should be directed to:

David Tobenkin, Office of Market Oversight and Investigations, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, 202–502–6445, *david.tobenkin@ferc.gov.*

William Meroney, Office of Market Oversight and Investigations, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, 202–502–8069, *william.meroney@ferc.gov.*

Comment Date: 5 p.m. Eastern Time on August 22, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–4058 Filed 7–28–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Membership of Performance Review Board for Senior Executives (PRB)

July 22, 2005.

The Federal Energy Regulatory Commission hereby provides notice of the membership of its Performance Review Board (PRB) for the Commission's Senior Executive Service (SES) members. The function of this board is to make recommendations relating to the performance of senior executives in the Commission. This action is undertaken in accordance with Title 5, U.S.C., Section 4314(c)(4). The Commission's PRB will remove the following member: William F. Hederman. And will add the following member: Shelton M. Cannon.

Magalie R. Salas,

Secretary.

[FR Doc. E5–4055 Filed 7–28–05; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7946–1]

Agency Information Collection Activities OMB Responses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This document announces the Office of Management and Budget's (OMB) responses to Agency clearance requests, in compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

FOR FURTHER INFORMATION CONTACT: Susan Auby (202) 566–1672, or e-mail at *auby.susan@epa.gov* and please refer to the appropriate EPA Information Collection Request (ICR) Number.

SUPPLEMENTARY INFORMATION:

OMB Responses to Agency Clearance Requests

OMB Approvals

EPA ICR No. 1816.03; EPA Strategic Plan Information on Source Water Assessment and Protection (Renewal); was approved 06/30/2005; OMB Number 2040–0197; expires 06/30/2008.

EPA ICR No. 0107.08; Source Compliance and State Action Reporting (Renewal); in 40 CFR 51.212, 40 CFR 51.323 (c) (1), 40 CFR 51.323 (c)(2), 40 CFR 51.324 (a) and (b), 40 CFR 51.327, 40 CFR 70.4 (j)(1), 40 CFR 70.10 (c)(1)(iii), 40 CFR part 52, 40 CFR part 60, 40 CFR part 63; was approved 06/30/2005; OMB Number 2060–0096; expires 06/30/2008.

EPA ICR No. 1637.06; General Conformity of Federal Actions to State Implementation Plans (Renewal); in 40 CFR part 51, subpart W; and 40 CFR part 93, subpart B; was approved 07/01/2005; OMB Number 2060–0279; expires 07/31/2008.

EPA ICR No. 1896.05; Disinfectants/Disinfection Byproducts, Chemical and Radionuclides Rule (Renewal); in 40 CFR 141.23(A)(a)–(b); 40 CFR 141.23(d)–141.24; 40 CFR 141.26; 40 CFR 141.31(a)–(c) and (e); 40 CFR 141.32(f); 40 CFR 141.33(a)–(d); 40 CFR 141.35; 40 CFR 141.40; 40 CFR 141.42–141.43; 40 CFR 141.80–141.91; 40 CFR 141.111; 40 CFR 141.130–141.132; 40 CFR 141.134–141.135; 40 CFR 142.14(d)(2–7); 40 CFR 142.14(d)(12)(i)–(iv); 40 CFR 142.14(d)(13)–(16); 40 CFR 142.16(e), (h), (k)(1), (l)(1) and (2); was approved 06/23/2005; OMB Number 2040–0204; expires 06/30/2008.

EPA ICR No. 2018.02; Pollution Prevention Compliance Alternative; Transportation Equipment Cleaning (TEC) Point Source Category (Renewal); in 40 CFR part 442; was approved 06/23/2005; OMB Number 2040–0235; expires 06/30/2008.

EPA ICR No. 1973.03; Cooling Water Intake Structures—New Facility (Renewal); in 40 CFR 125.80 to 125.89, 40 CFR 122.21(r); was approved 06/23/2005; OMB Number 2040–0241; expires 06/30/2008.

EPA ICR No. 1812.03; Annual Public Water Systems Compliance Report (Renewal); was approved 06/23/2005; OMB Number 2020–0020; expires 06/30/2008.

EPA ICR No. 1977.02; National Wastewater Operator Training and Technical Assistance Program—CWA 104 (g)(1) (Renewal); was approved 06/23/2005; OMB Number 2040–0238; expires 06/30/2008.

EPA ICR No. 1391.07; Clean Water Act State Revolving Fund Program (Renewal); was approved 06/23/2005; OMB Number 2040–0118; expires 06/30/2008.

EPA ICR No. 1791.04; Establishing No-Discharge Zones (NDZs) Under Clean Water Act Section 312 (Renewal); in 40 CFR part 63, subparts AA and BB; was approved 06/23/2005; OMB Number 2040–0187; expires 06/30/2008.

EPA ICR No. 2133.01; Survey Questionnaire to Determine the Effectiveness, Costs, and Impacts of Sewage and Graywater Treatment Devices for Large Cruise Ships Operating in Alaska; was approved 06/23/2005; OMB Number 2040–0260; expires 06/30/2008.

EPA ICR No. 0922.07; Data Call-ins for the Special Review and Registration Review Programs; in 40 CFR part 158; was approved 06/20/2005; OMB Number 2070–0057; expires 06/30/2008.

EPA ICR No. 1911.02; Data Acquisition for Anticipated Residue and Percent of Crop Treated; was approved 06/20/2005; OMB Number 2070–0164; expires 06/30/2008.

EPA ICR No. 1504.05; Data Generation for Pesticide Reregistration; in 40 CFR part 158; was approved 06/20/2005; OMB Number 2070–0107; expires 06/30/2008.

Short Term Extensions

EPA ICR No. 1955.02; Operator Certification Guidelines and Operator Certification Expense Reimbursement Grants Program; OMB Number 2040–0236; on 06/23/2005 OMB extended the expiration date through 09/30/2005.

EPA ICR No. 2052.01; Information Collection Request for Long Term 1 Enhanced Surface Water Treatment Rule (Final Rule); OMB Number 2040–0229; on 07/08/2005 OMB extended the expiration date through 10/31/2005.

Withdrawn

EPA ICR No. 1934.02; National Primary Drinking Water Regulations: Ground Water Rule (Final Rule); on 06/23/2005 the ICR was withdrawn by EPA.

Comment Filed and Continued

EPA ICR No. 1591.17; Regulation of Fuels and Fuel Additives: Modifications of Anti-Dumping Baselines for Gasoline Produced of Imported for Use in Hawaii, Alaska and U.S. Territories (Proposed Rule); OMB Number 2060–0277; on 06/20/2005 OMB filed comment.

Dated: July 19, 2005.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 05–15056 Filed 7–28–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OAR–2005–0084; FRL–7946–2]

Agency Information Collection Activities: Proposed Collection; Comment Request; Information Request for National Emission Standards for Hazardous Air Pollutants From Plating and Polishing Operations, EPA ICR Number 2186.01

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the Environmental Protection Agency (EPA) is planning to submit a proposed Information Collection Request (ICR) to the Office of Management and Budget (OMB). This is a request for a new collection. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before September 27, 2005.

ADDRESSES: Submit your comments, referencing Docket ID number OAR–2005–0084, to EPA online using EDOCKET (our preferred method), by e-mail to *a-and-r-docket@epa.gov*, or by mail to: EPA Docket Center, EPA, Air and Radiation Docket, Mailcode 6102T, 1200 Pennsylvania Avenue NW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Susan Auby, Collection Strategies Division, Environmental Protection Agency (2822T), 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 566–1672; fax number: (202) 566–1639; e-mail address: *auby.susan@epa.gov*.

SUPPLEMENTARY INFORMATION: The EPA has established a public docket for this ICR under Docket ID number OAR–2005–0084, which is available for public viewing at the Air and Radiation Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC 20460. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket is (202) 566–1742. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket*. Use EDOCKET to obtain a copy of the draft collection of information, submit or view public comments, access the index listing the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA within 60 days of this notice. The EPA's policy is that public comments, whether submitted electronically or on paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted information, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov./edocket*.

Affected entities: Entities potentially affected by this action are establishments primarily engaged in all types of electroplating, electroless plating, metal spraying, anodizing, coloring, and finishing of metals and formed products for the trade. Also potentially affected by this action are establishments which perform these types of activities, on their own account, on purchased metals or formed products. The standard industrial classification (SIC) code for this industry is primarily 3471, Electroplating, Plating, Polishing, Anodizing, and Coloring; the North American Industry Classification System (NAICS) code is 332813, Electroplating, Plating, Polishing, Anodizing, and Coloring.

Title: Information Request for National Emission Standards for Hazardous Air Pollutants (NESHAP) from Plating and Polishing Operations.

Abstract: The proposed ICR will collect information and data from 930 existing plating and polishing facilities. Facilities will be requested to complete a simple paper questionnaire on general facility information (location, description, processes, electroplating finishes applied, technical contact), hazardous air pollutant (HAP) emissions and permit data, permit conditions, emission tests data, processes and equipment, HAP-containing material data, local ventilation system information, and HAP emission control/reduction measures. The questionnaire may be completed from readily available information; no additional emission testing or monitoring will be required.

The EPA will use the collected information and data to evaluate the need for area source NESHAP required under section 112(k) of the Clean Air Act (CAA) for the Plating and Polishing Area Source Category. If the area source NESHAP are developed, the collected information will be used to evaluate the types of provisions needed to limit HAP emissions from plating and polishing operations and to estimate the impacts of regulatory options.

This collection of information is mandatory under section 114 of the CAA (42 U.S.C 7414). All information submitted to EPA pursuant to this ICR for which a claim of confidentiality is made is safeguarded according to Agency policies in 40 CFR part 2, subpart B. 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. OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

The EPA would like to solicit comments to:

(i) 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;

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) 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.

Burden Statement: The projected cost and hour burden for this one-time collection is $720,000 and 11,400 hours. This burden is based on an estimated 930 likely respondents and an average annual respondent burden of 12 hours at a cost of $770 per facility. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: July 20, 2005.

Sally L. Shaver,

Director, Emission Standards Division, Office of Air Quality Planning and Standards.

[FR Doc. 05–15057 Filed 7–28–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6665–8]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act, as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at 202–564–7167. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published

in the **Federal Register** dated April 1, 2005 (70 FR 16815).

Draft EISs

EIS No. 20050192, ERP No. D–AFS–K65283–CA, Empire Vegetation Management Project, Reducing Fire Hazards, Harvesting of Trees Using Group-Selection (GS) and Individual Trees Selection (ITS) Methods, Mt. Hough Ranger District, Plumas National Forest, Plumas County, CA.

Summary: EPA expressed environmental concerns about cumulative impacts to air and water quality as a result of prescribed fire, mechanical harvesting, and road construction, and requested the final EIS include additional information on monitoring and maintenance of the desired conditions.

Rating EC2.

EIS No. 20050206, ERP No. D–SFW–E65074–NC, Roanoke River National Wildlife Refuge, Comprehensive Conservation Plan, To Determine and Evaluate a Range of Reasonable Management Alternatives, Bertie County, NC.

Summary: EPA supports the agency's Preferred Alternative 3, which maximizes wildlife-dependent uses of Refuge resources.

Rating LO.

EIS No. 20050210, ERP No. D–AFS–J65443–CO, Rock Creek Integrated Management Project, Propose Treatment to Address Mountain Beetle Epidemics, and to Reduce Wildfires within the Rock Creek Analysis Area, Medicine Bow-Routt National Forests and Thunder Basin National Grassland, Glenwood Springs Resource Area, Routt and Grand Counties, CO.

Summary: EPA expressed environmental concerns about on the potential for adverse impacts to impaired streams and already significantly impacted watersheds, and requested that the final EIS include a more definitive estimation of water quality impacts and specific mitigation for measures for watershed impacts.

Rating EC2.

EIS No. 20050211, ERP No. D–SFW–H65024–IA, Driftless Area National Wildlife Refuge Comprehensive Conservation Plan, To Recover and Conserve the Northern Monkshood and Iowa Pleistocene Snail, IA.

Summary: EPA has no objections to the proposed project.

Rating LO.

EIS No. 20050213, ERP No. D–FHW–F40432–MN, Trunk Highway 23 Improvements Project, From 0.25 Miles West of CSAH 6 in Kandiyohi County to 0.3 Miles Southwest of CSAH 123 Stearns County, City of Paynesville, Kandiyohi and Stearns Counties, MN.

Summary: EPA has environmental concerns about the proposed project's impacts to water quality and the drinking water supply, aquatic resources, wildlife habitat, wetlands, and sensitive noise receptors.

Rating EC2.

Final EISs

EIS No. 20050140, ERP No. F–FHW–K40250–NV, Boulder City/US 93 Corridor Transportation Improvements, Study Limits are between a western boundary on U.S. 95 in the City of Henderson and an eastern boundary on U.S. 93 west of downtown Boulder City, NPDES and U.S. Army COE Section 404 Permits Issuance and Right-of-Way Grant, Clark County, NV.

Summary: EPA continues to have environmental concerns about the proposed project's impacts to water, biological resources, and air quality, as well as invasive species issues.

EIS No. 20050155, ERP No. F–AFS–L65114–00, Plentybob Ecosystem Restoration Project, Restoration Activities Include: Prescribed Fire, Timber Harvest, Road Obliteration, Hardwood Planting and Noxious Weed Treatment, Implementation, Walla Walla Ranger District, Umatilla National Forest, Umatilla County, OR.

Summary: The Final EIS addressed EPA's request for additional information on air quality impacts from smoke. EPA has no objections to the proposed project.

EIS No. 20050237, ERP No. F–NOA–K91012–00, Bottomfish and Seamount Groundfish Fisheries Conservation and Management Plan, Implementation, US Economic Zone (EEZ) around the State of Hawaii, Territories of Samoa and Guam, Commonwealth of the Northern Mariana and various Islands and Atolls known as the U.S. Pacific remove Island areas, HI, GU and AS.

Summary: EPA continues to have concerns about potential impacts to the Hawaiian monk seal because the project no longer incorporate voluntary mitigation measures into the Fishery Management Plan or codified in regulations.

EIS No. 20050255, ERP No. F–BLM–A65175–00, Programmatic—Wind Energy Development Program, To Address Stewardship, Conservation and Resource Use on BLM-Administered Lands, Right-of-Way Grants, Western United States.

Summary: No formal comment letter was sent to the preparing agency.

EIS No. 20050271, ERP No. F–AFS–J65021–MT, Gallatin National Forest Noxious and Invasive Weed Control Project, To Prevent and Reduce Loss of Native Plant, Bozeman, Carbon, Madison, Gallatin, Meagher, Park, and Sweet Grass Counties, MT.

Summary: EPA has no objections to the proposed action and supports the integrated weed management program, emphasizing the need for adequate mitigation measures and monitoring to protect surface and ground waters and public health.

Dated: July 26, 2005.

Robert W. Hargrove,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 05–15049 Filed 7–28–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6665–7]

Environmental Impacts Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or *http://www.epa.gov/compliance/nepa/.*

Weekly receipt of Environmental Impact Statements

Filed 07/18/2005 through 07/22/2005

Pursuant to 40 CFR 1506.9.

EIS No. 20050301, Draft EIS, FAA, 00, Programmatic—Horizontal Launch and Reentry of Reentry Vehicles, Facilitate the Issuance of Licenses in United States, Comment Period Ends: 09/12/2005, Contact: Stacey M. Zee 202–267–9305.

EIS No. 20050302, Fourth Final Supplement, IBW, CA, South Bay International Wastewater Treatment Plan (SBIWTP), To Address Treatment Alternatives from Tijuana, Mexico that cross into United States/Mexico Border in San Diego County, CA, Wait Period Ends: 08/29/2005, Contact: Daniel Borunda 915–832–4701.

EIS No. 20050303, Final EIS, EPA, CA, LA–3 Ocean Dredged Material Disposal Site off Newport Bay, Proposed Site Designation, Orange County, CA, Wait Period Ends: 08/29/2005, Contact: Larry Smith 213–452–3846.

EIS No. 20050304, Final EIS, AFS, ID, Red Pines Project, Implementation of Fuel Reduction Activities and

Watershed Activities Improvement, Nez Perce National Forest, Red River Ranger District, Idaho County, ID, Wait Period Ends: 08/29/2005, Contact: Jennie Fischer 209–983–1950.

EIS No. 20050305, Draft Supplement, AFS, OR, Drew Creek, Diamond Rock and Divide Cattle Allotments, Updated Information. Issuance of Term Grazing Permits on Livestock Allotments on Tiller Ranger District, Implementation, Umpqua National Forest, Douglas and Jackson Counties, OR, Comment Period Ends: 09/12/2005, Contact: Wes Yamamoto 541–825–3201.

EIS No. 20050306, Draft EIS, FHW, NE, US Highway 34, Plattsmouth Bridge Study, over the Missouri River between U.S. 75 and I–29, Funding, Coast Guard Permit, US Army COE 10 and 404 Permits, Cass County, NE and Mills County, IA, Comment Period Ends: 09/12/2005, Contact: Edward Kosala 402–437–5973.

EIS No. 20050307, Final EIS, IBR, CA, Battle Creek Salmon and Steelhead Restoration Project, To Address New Significant Information, Habitat Restoration in Battle Creek and Tributaries, License Amendment Issuance, Implementation, Tehama and Shasta Counties, CA, Wait Period Ends: 08/29/2005, Contact: Mary Marshall 916–978–5248.

EIS No. 20050308, Draft EIS, BLM, NV, Ely District Resource Management Plan, Implementation, White Pine, Lincoln Counties and a Portion of Nye County, NV, Comment Period Ends: 11/28/2005, Contact: Gene Davis 775–289–1880.

EIS No. 20050309, Final Supplement, AFS, WA, Deadman Creek Ecosystem Management Projects, Information of the Planning the Analysis of the Watershed, Three Rivers Ranger District, Colville National Forest, Ferry County, WA, Wait Period Ends: 08/29/2005, Contact: Sherri Schwenke 509–738–7700.

EIS No. 20050310, Draft EIS, JUS, TX, Laredo Detention Facility, Proposed Contractor-Owned/Contractor-Operated Detention Facility, Implementation, Webb County, TX, Comment Period Ends: 09/12/2005, Contact: Arnett A. Rogiers 202–305–9427.

EIS No. 20050311, Draft EIS, NPS, NE, Niobrara National Scenic River General Management Plan, Implementation, Brown, Cherry, Keya Paha and Rock Counties, NE, Comment Period Ends: 09/12/2005, Contact: Paul Hedren 402–336–3970.

EIS No. 20050312, Final EIS, NRC, CT, Generic-License Renewal of Nuclear Plants for the Millstone Power Station, Units 2 and 3, Supplement 22 to NUREG–1437, Implementation, New London County, CT, Wait Period Ends: 08/29/2005, Contact: Richard L. Emch 301–415–1590.

Dated: July 26, 2005.

Robert W. Hargrove,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 05–15050 Filed 7–28–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[Docket ID No. OW–2004–0004; FRL–7945–3]

Notice of Availability: Tribal Drinking Water Operator Certification Program Final Guidelines

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is announcing the availability of the Tribal Drinking Water Operator Certification Program (Program) Final Guidelines. EPA established the Program to further protect public health by providing operators of drinking water systems in Indian country additional training and certification opportunities for community and non-transient non-community drinking water systems. The Program guidelines establish baseline standards for non-State organizations certifying operators of systems in Indian county and outline a consistent method of assessing, tracking, and addressing the certification and training needs of those operators.

DATES: The Tribal Drinking Water Operator Certification Program Final Guidelines are effective as of July 29, 2005.

ADDRESSES: EPA had previously established a docket for seeking public comment on the Draft Final Guidelines under Docket ID No. OW–2004–0004. All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket*.

FOR FURTHER INFORMATION CONTACT: The Safe Drinking Water Hotline at 800–426–4791 for copies of the guidelines and for general information about the document. The guidelines are also available on the EPA Office of Ground Water and Drinking Water Web site at *http://www.epa.gov/safewater/tribal.html*. For technical inquiries, contact Monica Peña, Environmental Protection Agency, Office of Ground Water and Drinking Water, Mail Code 4606M, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–2575; e-mail: *pena.monica@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. How Can I Get Copies of The Guidelines and Other Related Information?

1. Docket. EPA has established an official public docket for this action under Docket ID No. OW–2004–0004. 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 Water Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Water Docket is (202) 566-2426.

2. Electronic Access. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in section I.A. Once in the system, select ''search,'' then key in the appropriate docket identification number.

B. Background

The Tribal Drinking Water Operator Certification Program Final Guidelines represent EPA's effort to establish a program for Tribes that is flexible, while at the same time provides meaningful public health protection to the drinking

water community. The Program will provide Tribes with further training and certification opportunities in addition to existing training or certification programs offered by States, various Federal agencies, and private organizations. EPA established the Program to further protect public health by providing operators of drinking water systems in Indian country additional training and certification opportunities for community and non-transient non-community drinking water systems. (A community water system provides drinking water to the same people year-round. A non-transient non-community water system is a water system that serves at least 25 of the same customers on less than a year-round basis.) The Program guidelines establish baseline standards for non-State organizations certifying operators of Tribal systems and outlines a consistent method of assessing, tracking, and addressing certification and training needs on Tribal lands. The Agency believes that establishing a Tribal Operator Certification Program will help bring greater public health protection to Tribal communities.

In 1998, EPA headquarters (HQ) and Regional Offices formed a workgroup to discuss possible approaches for developing the Program in consultation with the Tribes. In addition, EPA coordinated with other Federal agencies and sought their recommendations. A Notice of Availability for the draft guidelines was published in the **Federal Register** on March 30, 2000 (65 FR 16917). An additional Notification of Availability was published in the **Federal Register** on April 19, 2004 (69 FR 20874); public comments to those notices and EPA's responses are available at *http://www.epa.gov/safewater/tribal.html*.

Dated: July 14, 2005.

Benjamin H. Grumbles,

Assistant Administrator, Office of Water.

[FR Doc. 05–15055 Filed 7–28–05; 8:45 am]

BILLING CODE 6560–50–P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Sunshine Act; Meeting

DATE AND TIME: Monday, August 8, 2005, 4:30 p.m. eastern time.

PLACE: Clarence M. Mitchell, Jr. Conference Room on the Ninth Floor of the EEOC Office Building, 1801 ''L'' Street, NW., Washington, DC 20507.

STATUS: The meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Open Session

1. Announcement of Notation Votes,
2. Purchase of Videoconferencing Equipment, and
3. Upgraded Hardware & Software for FEPA IMS Integration.

Note: In accordance with the Sunshine Act, the meeting will be open to public observation of the Commission's deliberations and voting. (In addition to publishing notices on EEOC Commission meetings in the **Federal Register**, the Commission also provides a recorded announcement a full week in advance on future Commission sessions.)

Please telephone (202) 663–7100 (voice) and (202) 663–4074 (TTY) at any time for information on these meetings.

CONTACT PERSON FOR MORE INFORMATION: Stephen Llewellyn, Acting Executive Officer on (202) 663–4070.

Dated: July 27, 2005.

Stephen Llewellyn,

Acting Executive Officer, Executive Secretariat.

[FR Doc. 05–15176 Filed 7–27–05; 3:43 pm]

BILLING CODE 6750–06–M

FEDERAL MARITIME COMMISSION

Sunshine Act Meeting

TIME AND DATE: 10 a.m.—August 3, 2005.

PLACE: 800 North Capitol Street, NW., First Floor Hearing Room, Washington, DC

STATUS: Open.

MATTERS TO BE CONSIDERED: 1. Non-Vessel-Operating Common Carrier Service Arrangements.

CONTACT PERSON FOR MORE INFORMATION: Bryant L. VanBrakle, Secretary, (202) 523–5725.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 05–15104 Filed 7–26–05; 4:15 pm]

BILLING CODE 6730–01–M

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 August 23, 2005.

A. Federal Reserve Bank of Chicago (Patrick M. Wilder, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. Capital Bancorp, Ltd., Lansing, Michigan; to acquire 51 percent of the voting shares of Capital Development Bancorp Limited III, Lansing, Michigan, and thereby indirectly acquire Bank of Santa Barbara (in organization), Santa Barbara, California. In connection with two applications Capitol Development Bancorp Limited III has applied to become a bank holding company.

2. Capitol Bancorp, Ltd., Lansing, Michigan, and Capitol Development Bancorp Limited III, Lansing, Michigan; to acquire 51 percent of the voting shares of Bank of Hayti, Hayti, Missouri.

B. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Sterling Bancshares, Inc., Houston, Texas and Sterling Bancorporation, Inc., Wilmington, Delaware; to acquire 100 percent of the voting shares of Prestonwood Bancshares, Inc., Dallas Texas, and thereby indirectly acquire Prestonwood Bancshares Nevada, Inc., Carson City, Nevada, and The Oaks Bank and Trust Company, Dallas, Texas.

Board of Governors of the Federal Reserve System, July 25, 2005.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 05–14993 Filed 7–28–05; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

[Document Identifier: OS–0990–New]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Office of the Secretary, Assistant Secretary for Health, Office of Public Health and Science

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: New Collection.

Title of Information Collection: Blood Availability and Safety Information System.

Form/OMB No.: OS–0990–New.

Use: To assure blood supplies in the United States are safe and adequate to meet the needs of man-made and natural disasters as well as seasonal shortages a statistically accurate monitoring program is proposed.

Frequency: Reporting daily.

Affected Public: Not-for-profit institutions.

Annual Number of Respondents: 1,000.

Total Annual Responses: 36,500.

Average Burden Per Response: 30 minutes.

Total Annual Hours: 30,416.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access the HHS Web site address at *http://www.hhs.gov/oirm/infocollect/pending/* or e-mail your request, including your address, phone number, OMB number, and OS document identifier, to *naomi.cook@hhs.gov*, or call the Reports Clearance Office on (202) 690–6162. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the OS Paperwork Clearance Officer designated at the following address: Department of Health and Human Services, Office of the Secretary, Assistant Secretary for Budget, Technology, and Finance, Office of Information and Resource Management, Attention: Naomi Cook (0990–New), Room 531–H, 200 Independence Avenue, SW., Washington DC 20201.

Dated: July 21, 2005.

Robert E. Polson,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. 05–14969 Filed 7–28–05; 8:45 am]

BILLING CODE 4150–28–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Toxicology Program (NTP); Center for the Evaluation of Risks to Human Reproduction (CERHR); Announcement of the Di(2-ethylhexyl)-phthalate Expert Panel Meeting and Availability of the Draft Expert Panel Report on Di(2-ethylhexyl)-phthalate; Request for Public Comment

AGENCY: National Institute for Environmental Health Sciences (NIEHS); National Institutes of Health (NIH).

ACTION: Meeting announcement and request for comment.

SUMMARY: The CERHR announces the availability of the draft expert panel report for di(2-ethylhexyl)-phthalate (DEHP) on August 15, 2005, from the CERHR Web site (*http://cerhr.niehs.nih.gov*) or in printed text from the CERHR (see **ADDRESSES** below). The CERHR invites the submission of public comments on sections 1–4 of the draft expert panel report (see **SUPPLEMENTARY INFORMATION** below). The expert panel will meet on October 10–12, 2005, at the Holiday Inn Old Town Select in Alexandria, Virginia to review and revise the draft expert panel report and reach conclusions regarding whether exposure to DEHP is a hazard to human development or reproduction. The expert panel will also identify data gaps and research needs. CERHR expert panel meetings are open to the public with time scheduled for oral public comment. Attendance is limited only by the available meeting room space. Following the expert panel meeting and completion of the expert panel report, the CERHR will post the report on its Web site and solicit public comment on it through a **Federal Register** notice.

DATES: The expert panel meeting for DEHP will be held on October 10–12, 2005. Sections 1–4 of the draft expert panel report will be available for public comment on August 15, 2005. Written public comments on the draft report should be received by September 28, 2005. Individuals wishing to make oral public comments at the expert panel meeting are asked to contact Dr. Michael D. Shelby, CERHR Director, by September 28, 2005, and if possible, also send a copy of the statement or talking points at that time. Persons needing special assistance in order to attend are asked to contact Dr. Shelby at least 7 business days prior to the meeting.

ADDRESSES: The expert panel meeting for DEHP will be held at the Holiday Inn Old Town Select Alexandria, Virginia (telephone: 703–549–6080, facsimile: 703–684–6508). Comments on the draft expert panel report and other correspondence should be addressed to Dr. Michael D. Shelby, CERHR Director, NIEHS, PO Box 12233, MD EC–32, Research Triangle Park, NC 27709 (mail), (919) 541–3455 (phone), (919) 316–4511 (fax), or *shelby@niehs.nih.gov* (e-mail). Courier address: CERHR, 79 T.W. Alexander Drive, Building 4401, Room 103, Research Triangle Park, NC 27709.

SUPPLEMENTARY INFORMATION:

Background

Di(2-ethylhexyl)-phthalate (CAS RN: 117–81–7) is a high production volume chemical used as a plasticizer of polyvinyl chloride in the manufacturer of a wide variety of consumer products, such as building products, car products, clothing, food packaging, children's products (but not in toys intended for mouthing) and in polyvinyl chloride medical devices. In 1999–2000, a NTP–CERHR expert panel evaluated DEHP and six other phthalates for reproductive and developmental toxicities. Since release of the NTP–CERHR expert panel report on DEHP in 2000, approximately 70 papers relevant to human exposure and reproductive and/or developmental toxicity of DEHP have been published. Because this is a chemical with wide human exposure and public and government interest, CERHR plans to convene an expert

panel to conduct an updated evaluation of the potential reproductive and developmental toxicities of DEHP.

At the expert panel meeting, the expert panel will review and revise the draft expert panel report and reach conclusions regarding whether exposure to DEHP is a hazard to human reproduction or development. Each expert panel report has the following sections:

1.0 Chemistry, Use, and Human Exposure
2.0 General Toxicological and Biological Effects
3.0 Developmental Toxicity Data
4.0 Reproductive Toxicity Data
5.0 Summary, Conclusions, and Critical Data Needs (to be prepared at expert panel meeting)

Request for Comments

The CERHR invites written public comments on sections 1–4 of the draft expert panel report on DEHP. Any comments received will be posted on the CERHR Web site prior to the meeting and distributed to the expert panel and CERHR staff for their consideration in revising the draft report and preparing for the expert panel meeting. Persons submitting written comments are asked to include their name and contact information (affiliation, mailing address, telephone and facsimile numbers, e-mail, and sponsoring organization, if any) and send them to Dr. Shelby (see **ADDRESSES** above) for receipt by September 28, 2005.

Time is set-aside on October 10, 2005, for the presentation of oral public comments at the expert panel meeting. Seven minutes will be available for each speaker (one speaker per organization). When registering to comment orally, please provide your name, affiliation, mailing address, telephone and facsimile numbers, email and sponsoring organization (if any). If possible, also send a copy of the statement or talking points to Dr. Shelby by September 28, 2005. This statement will be provided to the expert panel to assist them in identifying issues for discussion and will be noted in the meeting record. Registration for presentation of oral comments will also be available at the meeting on October 10, 2005, from 7:30–8:30 AM. Those persons registering at the meeting are asked to bring 20 copies of their statement or talking points for distribution to the expert panel and for the record.

Preliminary Agenda

The meeting begins each day at 8:30 AM. On October 10 and 11, it is anticipated that a lunch break will occur from noon–1 p.m. and the meeting will adjourn at 5–6 p.m. The meeting is expected to adjourn by noon on October 12; however, adjournment may occur earlier or later depending upon the time needed by the expert panel to complete its work. Anticipated agenda topics for each day are listed below.

October 10, 2005

- Opening remarks
- Oral public comments (7 minutes per speaker; one representative per group)
- Review of sections 1–4 of the draft expert panel report on di (2-ethylhexyl)-phthalate
- Discussion of Section 5.0 Summary, Conclusions, and Critical Data Needs

October 11, 2005

- Discussion of Section 5.0 Summary, Conclusions, and Critical Data Needs
- Preparation of draft summaries and conclusion statements

October 12, 2005

- Presentation, discussion of, and agreement on summaries, conclusions, and data needs
- Closing comments

Expert Panel Roster

The CERHR expert panel is composed of independent scientists selected for their scientific expertise in reproductive and/or developmental toxicology and other areas of science relevant for this review.

Robert J. Kavlock, Ph.D., (Chair)—U.S. Environmental Protection Agency Research Triangle Park, NC
Dana Boyd Barr, Ph.D.—Centers for Disease Control & Prevention, Atlanta, GA
Kim Boekelheide, MD, Ph.D.—Brown University, Providence, RI
William J. Breslin, Ph.D.—Eli Lilly and Company, Greenfield, IN
Patrick N. Breysse, Ph.D.—The Johns Hopkins University, Baltimore, MD
Robert E. Chapin, Ph.D.—Pfizer Global Research & Development Groton, CT
Kevin Gaido, Ph.D.—CIIT Centers for Health Research, Research Triangle Park, NC
Ernest. Hodgson, Ph.D.—North Carolina State University, Raleigh, NC
Michele Marcus, Ph.D.—Emory University, Atlanta, GA
Katherine M. Shea, MD, MPH—Consultant, Chapel Hill, NC
Paige L. Williams, Ph.D.—Harvard School of Public Health, Boston, MA

Background Information on the CERHR

The NTP established the NTP CERHR in June 1998 [**Federal Register**, December 14, 1998 (Volume 63, Number 239, page 68782)]. The CERHR is a publicly accessible resource for information about adverse reproductive and/or developmental health effects associated with exposure to environmental and/or occupational exposures. Expert panels conduct scientific evaluations of agents selected by the CERHR in public forums.

The CERHR invites the nomination of agents for review or scientists for its expert registry. Information about CERHR and the nomination process can be obtained from its homepage (*http://cerhr.niehs.nih.gov*) or by contacting Dr. Shelby (see **ADDRESSES** above). The CERHR selects chemicals for evaluation based upon several factors including production volume, potential for human exposure from use and occurrence in the environment, extent public concern, and extent of data from reproductive and developmental toxicity studies.

CERHR follows a formal, multi-step process for review and evaluation of selected chemicals. The formal evaluation process was published in the **Federal Register** on July 16, 2001 (Volume 66, Number 136, pages 37047–37048) and is available on the CERHR web site under ''About CERHR'' or in printed copy from the CERHR.

Dated: July 22, 2005.

David A. Schwartz,

Director, National Institute of Environmental Health Sciences and the National Toxicology Program.

[FR Doc. 05–15080 Filed 7–28–05; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration on Aging

Agency Information Collection Activities; Proposed Collection; Comment Request; Fourth National Survey of Older Americans Act Title III Service Recipients

AGENCY: Administration on Aging, HHS.

ACTION: Notice.

SUMMARY: The Administration on Aging (AoA) 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, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice

solicits comments on the information collection requirements contained in the annual consumer assessment survey which is used by AoA to measure program performance for programs funded under Title III of the Older Americans Act.

DATES: Submit written or electronic comments on the collection of information by September 27, 2005.

ADDRESSES: Submit electronic comments on the collection of information to: *Cynthia.Bauer@aoa.gov.* Submit written comments on the collection of information to Administration on Aging, Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: Cynthia Agens Bauer on 202–357–0145.

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 request 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, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, AoA is publishing notice of the proposed collection of information set forth in this document. With respect to the following collection of information, AoA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of AoA's functions, including whether the information will have practical utility; (2) the accuracy of AoA'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.

Fourth National Survey of Older Americans Act Title III Service Recipients—NEW—This information collection, which builds on earlier national pilot studies and performance measurement tools developed by AoA grantees in the Performance Outcomes Measures Project (POMP), is a comprehensive recipient survey which will include consumer assessment modules for the Home-delivered Nutrition Program, Congregate Nutrition Program, Transportation Services, Homemaker Services and Chore Services. Recipients of services from the National Family Caregiver Support Program will also be surveyed. Copies of the POMP instruments can be located at *www.gpra.net.* This information will be used by AoA to track performance outcome measures; support budget requests; comply with Government Performance and Results Act (GPRA) reporting; provide information for OMB's Program Assessment Rating Tool (PART); provide national benchmark information for POMP grantees and inform program development and management initiatives. AoA estimates the burden of this collection of information as follows:

Respondents: Individuals.

Number of Respondents: 6,000.

Number of Responses per Respondent: One.

Average Burden per Response: 30 minutes.

Total Burden: 3,000 hours.

Dated: July 26, 2005.

Josefina G. Carbonell,

Assistant Secretary for Aging.

[FR Doc. 05–15037 Filed 7–28–05; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Full-Access Home-Based Confidential Counseling and Testing Using Outreach Teams in One District in the Republic of Uganda

Announcement Type: New.

Funding Opportunity Number: AA009.

Catalog of Federal Domestic Assistance Number: 93.067.

Key Dates: Application Deadline: August 22, 2005.

I. Funding Opportunity Description

Authority: This program is authorized under Sections 307 and 317(k)(2) of the Public Health Service Act, [42 U.S.C. 242l(a) and 247b(k)(2)], as amended, and under Public Law 108–25 (United States Leadership Against HIV/AIDS, Tuberculosis and Malaria Act of 2003) [22 U.S.C. 7601].

Background: President Bush's Emergency Plan for AIDS Relief has called for immediate, comprehensive and evidence-based action to turn the tide of global HIV/AIDS. The initiative aims to treat more than two million HIV-infected people with effective combination anti-retroviral therapy by 2008; care for ten million HIV-infected and affected persons, including those orphaned by HIV/AIDS, by 2008; and prevent seven million infections by 2010, with a focus on 15 priority countries, including 12 in sub-Saharan Africa. The five-year strategy for the Emergency Plan is available at the following Internet address: *http://www.state.gov/s/gac/rl/or/c11652.htm.*

Purpose

The Centers for Disease Control and Prevention (CDC) within the U.S. Department of Health and Human Services (HHS) announces the availability of fiscal year (FY) 2005 funds for a cooperative agreement program for Full-Access Home-Based Confidential Counseling and Testing (HB—CT) by using outreach teams in one district in the Republic of Uganda.

The purpose of this funding announcement is to progressively build an indigenous, sustainable response to the national HIV epidemic in Uganda through the rapid expansion of innovative, culturally appropriate, high-quality HIV/AIDS prevention and care interventions.

Specifically, the winner of this announcement will develop a replicable model of rapid HB-CT to provide access for the entire population of a district to confidential HIV counseling and testing (CT) services within their residences. These services would include referral of those testing positive to sources of ongoing psycho-social support and basic preventative and palliative care. The provision of anti-retroviral therapy(ART) is not part of this program, although patients who qualify for ART under medical criteria may receive referrals to treatment sites as they become available.

The United States Government seeks to reduce the impact of HIV/AIDS in specific countries in sub-Saharan Africa, Asia and the Americas by working with governments and other key partners to assess the needs of each country and design a customized program of assistance that fits within the host nation's strategic plan. The President's Emergency Plan for AIDS Relief encompasses HIV/AIDS activities in more than 100 countries, and focuses on 15 countries, including Uganda, to develop comprehensive and integrated prevention, care and treatment programs.

Under the leadership of the U.S. Global AIDS Coordinator, as part of the

Emergency Plan, the HHS Global AIDS Program (GAP) strengthens capacity and expands local activities in the areas of: (1) Culturally appropriate HIV primary prevention: (2) HIV care, support and treatment; and (3) capacity and infrastructure development, including surveillance. Goals and priorities include the following:

- Achieving primary prevention of HIV infection through activities such as expanding confidential counseling and testing programs, building programs to reduce mother-to-child transmission, and strengthening programs to reduce transmission via blood transfusion and medical injections.
- Improving the care and treatment of HIV/AIDS, sexually transmitted diseases (STDs) and related opportunistic infections by improving STD management; enhancing care and treatment of opportunistic infections, including tuberculosis (TB); and initiating programs to provide anti-retroviral therapy (ART).
- Strengthening the capacity of countries to collect and use surveillance data and manage national HIV/AIDS programs by expanding HIV/STD/TB surveillance programs and strengthening laboratory support for surveillance, diagnosis, treatment, disease-monitoring and HIV screening for blood safety.

Targeted countries represent those with the most severe epidemics and the highest number of new infections. They also represent countries where the potential impact is greatest and where United States Government agencies are already active; Uganda is one of those countries.

The mission of the Emergency Plan in Uganda is to work with Ugandan and international partners to develop, evaluate, and support effective implementation of interventions to prevent HIV and related illnesses and improve care and support of persons with HIV/AIDS. In Uganda, Emergency Plan goals include treating at least 60,000 HIV-infected individuals; and providing care for 300,000 HIV-affected individuals, including orphans over the five years of Emergency Plan implementation. According to the 2002 Uganda Health Facilities Survey, confidential counseling and testing services are only available at five percent of public and private health facilities. In addition, the most recent Demographic and Health Survey in Uganda indicates that 70 percent of people would like to receive HIV testing, but only ten percent report they have been tested. Also, evidence from studies in several districts suggests that when offered confidential CT in their homes, between 50 and 90 percent accept the service. Cost-effective procedures of offering full-access HB–CT to the whole population over a relatively short period would provide an important strategy for averting infections and providing timely care to persons-living-with-HIV/AIDS (PLWHAs), especially in rural areas.

This announcement seeks to provide confidential HIV–CT services, and appropriate referrals to care and treatment, to all adults (and potentially all children) who reside in one district over a period of 24 months, to evaluate the experience, and to develop guidelines for cost-effective indigenous replication. This first phase of the program, including preparation and evaluation, will last 18 months. The grantee may complete follow-up activities and documentation of lessons learned in the form of guidelines during the last six months of this program. This program will include referrals to local care providers that offer basic preventative care, opportunistic disease management, palliative care, and, if available, ART, to persons with HIV/AIDS in the district, without taking on the long term responsibility or financial support for care provision.

Measurable outcomes of the program will be in alignment with the performance goals of the President's Emergency Plan and with one (or more) of the following performance goal(s) for the CDC National Center for HIV, STD and TB Prevention(NCHSTP) within HHS: By 2010, work with other countries, international organizations, the U.S. Department of State, U.S. Agency for International Development (USAID), and other partners to achieve the United Nations General Assembly Special Session on HIV/AIDS goal of reducing prevalence among young persons 15 to 24 years of age and to reduce HIV transmission and improve care of persons living with HIV. Specific measurable outcomes of this program include, but are not be limited to, the number, age and sex of clients (individual and couples) provided with confidential HIV HB–CT, the percentage coverage of the population by confidential HIV HB–CT, unrecognized HIV infections discovered, the cost per client service and per unrecognized infection, and the number of persons with HIV successfully referred to an effective care or treatment provider.

This announcement is only for non-research activities supported by HHS, including the Centers for Disease Control and Prevention (CDC). If an applicant proposes research activities, HHS will not review the application. For the definition of research, please see the HHS/CDC Web site at the following Internet address: *http://www.cdc.gov/od/ads/opspoll1.htm*.

Activities

Based on its competitive advantage and proven field experience, the winning applicant will undertake a broad range of activities to meet the numerical Emergency Plan targets outlined above. For each of these activities, the grantee will give priority to evidence-based, yet culturally adapted, innovative approaches.

The recipient of these funds is responsible for activities in multiple program areas designed to target underserved populations in Uganda. Either the awardee will implement activities directly or will implement them through its subgrantees and/or subcontractors; the awardee will retain overall financial and programmatic management under the oversight of HHS/CDC and the strategic direction of the Office of the U.S. Global AIDS Coordinator. The awardee must show a measurable progressive reinforcement of the capacity of indigenous organizations and local communities to respond to the national HIV epidemic, as well as progress towards the sustainability of activities.

Applicants should describe activities in detail as part of a two-year action plan (U.S. Government Fiscal Years 2005–2008 inclusive) that reflects the policies and goals outlined in the five-year strategy for the President's Emergency Plan.

The grantee will produce an annual operational plan in the context of this two-year plan, which the U.S. Government Emergency Plan team on the ground in Uganda will review as part of the annual Emergency Plan for AIDS Relief Country Operational Plan review and approval process managed by the Office of the U.S. Global AIDS Coordinator. The grantee may work on some of the activities listed below in the first year and in subsequent years, and then progressively add others from the list to achieve all of the Emergency Plan performance goals, as cited in the previous section. HHS/CDC, under the guidance of the U.S. Global AIDS Coordinator, will approve funds for activities on an annual basis, based on documented performance toward achieving Emergency Plan goals, as part of the annual Emergency Plan for AIDS Relief Country Operational Plan review and approval process.

Awardee activities for this program are as follows:

1. Identify project staffing needs; hire and train staff.

2. Identify the procurement needs of the project and implementing partners for vehicles, furnishings, fittings, equipment, computers and other fixed assets procurement, and acquire from normal sources through competitive processes.

3. Establish suitable administrative and financial management structures, including a project office, if required.

4. Work within the chosen district to implement confidential HIV HB–CT in such a manner that the coverage of the district's population is progressive, predictable and comprehensive by reaching communities systematically to ensure maximum and efficient coverage for the district.

5. Work with district public and private sector stakeholders to develop an effective referral system to care and treatment providers for those testing positive.

6. Ensure that all persons testing positive receive information about a basic preventive care package and referral to an effective care provider, or treatment provider, if available.

7. Support the development of a simple data-collection system, integrated within the general Ugandan government Health Management Information System (HMIS) that reflects useful information specifically related to confidential CT activities and Emergency Plan reporting requirements, consistent with the strategic information guidance provided by the Office of the U.S. Global AIDS Coordinator.

8. Ensure the installation and operation of a commodities supply and management system for test kits and other necessary items.

9. Implement a simple quality-assurance system for confidential HIV CT in a home-based setting.

10. Evaluate the activity and disseminate conclusions.

11. Participate in working groups to produce guidelines and training manuals in collaboration with the Ugandan Ministry of Health (MOH) and other public and private stakeholders relating to full-access confidential HB–CT.

12. Undertake the above activities in a manner consistent with the Ugandan national HIV/AIDS strategy and the five-year strategy and performance goals of the President's Emergency Plan for AIDS Relief.

13. Provide information on HIV prevention methods (or strategies) including abstinence, faithfulness and, for populations engaged in high-risk behaviors, correct and consistent condom use.

Awardee activities for covering all program areas are as follows:

1. Work to link activities described here with related HIV care and other social services in the area, and promote coordination at all levels, including through bodies such as village, district, regional and national HIV coordination committees and networks of faith-based organizations.

2. Participate in relevant national technical coordination committees and in national process(es) to define, implement and monitor simplified small grants program(s) for faith- and community-based organizations, to ensure local stakeholders receive adequate information and assistance to engage and access effectively funding opportunities supported by the President's Emergency Plan and other donors.

3. Progressively reinforce the capacity of faith- and community-based organizations and village and district AIDS committees to promote quality, local ownership, accountability and sustainability of activities.

4. Develop and implement a project-specific participatory monitoring and evaluation plan by drawing on national and U.S. Government requirements and tools, including the strategic information guidance provided by the Office of the U.S. Global AIDS Coordinator.

Administration

Comply with all HHS management requirements for meeting participation and progress and financial reporting for this cooperative agreement. (See HHS Activities and Reporting sections below for details.) Comply with all policy directives established by the Office of the U.S. Global AIDS Coordinator.

In a cooperative agreement, HHS staff is substantially involved in the program activities, above and beyond routine grant monitoring.

HHS Activities for this program are as follows:

1. Organize an orientation meeting with the grantee to brief them on applicable U.S. Government, HHS, and Emergency Plan expectations, regulations and key management requirements, as well as report formats and contents. The orientation could include meetings with staff from HHS agencies and the Office of the U.S. Global AIDS Coordinator.

2. Review and approve the process used by the grantee to select key personnel and/or post-award subcontractors and/or subgrantees to be involved in the activities performed under this agreement, as part of the Emergency Plan for AIDS Relief Country Operational Plan review and approval process, managed by the Office of the U.S. Global AIDS Coordinator.

3. Review and approve grantee's annual work plan and detailed budget, as part of the Emergency Plan for AIDS Relief Country Operational Plan review and approval process, managed by the Office of the U.S. Global AIDS Coordinator.

4. Meet on a monthly basis with grantee to assess monthly expenditures in relation to approved work plan and modify plans as necessary.

5. Meet on a quarterly basis with grantee to assess quarterly technical and financial progress reports and modify plans as necessary.

6. Meet on an annual basis with grantee to review annual progress report for each U.S. Government Fiscal Year, and to review annual work plans and budgets for subsequent year, as part of the Emergency Plan for AIDS Relief review and approval process for Country Operational Plans, managed by the Office of the U.S. Global AIDS Coordinator.

7. Provide technical assistance in the development of training curricula, materials, and diagnostic therapeutic guidelines.

8. Collaborate with the recipient in the development of an appropriate information technology system for medical record-keeping and an effective monitoring and evaluation and data-collection system for semi-annual and annual Emergency Plan reporting requirements, consistent with the strategic information guidance established by the Office of the U.S. Global AIDS Coordinator.

9. Review and approve awardee's monitoring and evaluation plan and the development of further appropriate initiatives, including for compliance with the strategic information guidance established by the Office of the U.S. Global AIDS Coordinator.

10. Assist in appropriate analysis and interpretation of data collected during training sessions.

11. Provide input into the overall program strategy.

12. Collaborate with the recipient in the selection of key personnel to be involved in the activities to be performed under this agreement including approval of the overall manager of the program.

13. Provide in-country administrative support to help grantee meet U.S. Government financial and reporting requirements.

Please note: Either HHS staff or staff from organizations that have successfully competed for funding under a separate HHS contract, cooperative agreement or grant will provide technical assistance and training.

Measurable outcomes of the program will be in alignment with the following performance goals for the Emergency Plan:

A. Prevention

Number of individuals trained to provide HIV prevention interventions, including abstinence, faithfulness and, for populations engaged in high-risk behaviors,[1] correct and consistent condom use.

1. Abstinence (A) and Be Faithful (B)

• Number of community outreach and/or mass media (radio) programs that are A/B focused

• Number of individuals reached through community outreach and/or mass media (radio) programs that are A/B focused.

B. Care and Support

1. Confidential counseling and testing

• Number of patients who accept confidential counseling and testing in a health-care setting.

• Number of clients served, direct.

• Number of people trained in confidential counseling and testing, direct, including health-care workers.

2. Orphans and Vulnerable Children (OVC)

Number of service outlets/programs, direct and/or indirect.

• Number of clients (OVC) served, direct and/or indirect.

• Number of persons trained to serve OVC, direct.

3. Palliative Care: Basic Health Care and Support

• Number of service outlets/programs that provide palliative care, direct and/or indirect.

• Number of service outlets/programs that link HIV care with malaria and tuberculosis care and/or referral, direct and/or indirect.

• Number of clients served with palliative care, direct and/or indirect.

• Number of persons trained in providing palliative care, direct.

C. HIV Treatment With ART

• Number of clients enrolled in ART, direct and indirect.

• Number of persons trained in providing ART, direct.

D. Strategic Information

• Number of persons trained in strategic information, direct.

E. Expanded Indigenous Sustainable Response

• Project-specific quantifiable milestones to measure:

a. Indigenous capacity-building.

b. Progress toward sustainability.

II. Award Information

Type of Award: Cooperative Agreement.

HHS involvement in this program is listed in the Activities Section above.

Fiscal Year Funds: 2005.

Approximate Total Funding: $1,290,000 (This amount is an estimate, and is subject to availability of funds.).

Approximate Number of Awards: One.

Approximate Average Award: $645,000 (This amount is for the first 12-month budget period, and includes direct costs.).

Floor of Award Range: None.

Ceiling of Award Range: $645,000.

Anticipated Award Date: August 31, 2005.

Budget Period Length: 12 months.

Project Period Length: Two years.

Throughout the project period, HHS' 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, through the Emergency Plan for AIDS Relief review and approval process for Country Operational Plans, managed by the Office of the U.S. Global AIDS Coordinator.

III. Eligibility Information

III.1. Eligible Applicants

The applicants for this program are limited to the following:

1. Ugandan MOH District Directorates of Health Services (DDHS) that are able to demonstrate existing partnerships with faith-based and community-based organizations.

2. Ugandan MOH District hospitals or Regional hospitals that partner with DDHS and have existing community-level networks/programs.

3. Private, not-for-profit hospitals in Uganda (including those managed or operated by faith-based institutions) with delegated responsibility of district hospital that partner with DDHS and CBOS.

Justification for limited competition:

• DDHS in Uganda are responsible for planning, management, and coordination of all health activities in each district. They also have a role in supporting supervision in health sub-districts and, through them, to lower-level health units. In this role, they are fully capable of planning the implementation of a full-access confidential HIV HB–CT program by working through the district health system and faith-based and community-based groups.

• All public health units are engaged in the delivery of the Uganda National Minimum Health Care Package[2] and collaborate with the community through integrated outreach services and community volunteers for health known as ''Community-Owned Resource Persons (CORPS).'' This is an excellent structure under which to pilot a full-access confidential HB–CT Program.

• Linking confidential HIV HB–CT to hospitals and other health facilities will provide clients who test positive for HIV with direct referrals to basic care and palliative care services, as well as to ART, where available.

• The involvement of DDHS will strengthen collaboration, advocacy and networking for all district HIV/AIDS programs.

• The Ugandan MOH is responsible for the development of policies and provision of technical assistance in the implementation of confidential HIV–HB–CT. The involvement of the MOH will facilitate the development of appropriate policies and guidelines for the replication of such programs in other districts, with advice and technical assistance from U.S. Government agencies that implement the President's Emergency Plan.

• Currently, VCT sites and services in Uganda are located in higher-level facilities only, the majority of which are located more than five kilometers away from where over 60 percent of the Ugandan population lives. Therefore, allowing districts to take a lead in the implementation of a confidential HIV CT program will bring confidential HIV CT nearer to the people in rural settings. Additionally, community-based and faith-based organizations are already providing most of the health care and basic social services at the community level, which makes them ideal partners to the DDHS and hospitals for successful implementation of this program.

[1] Behaviors that increase risk for HIV transmission including engaging in casual sexual encounters, engaging in sex in exchange for money or favors, having sex with an HIV-positive partner or one who status is unknown, using drugs or abusing alcohol in the context of sexual interactions, and using intravenous drugs. Women, even if faithful themselves, can still be at risk of becoming infected by their spouse, regular male partner, or someone using force against them. Other high-risk persons or groups include men who have sex with men and workers who are employed away from home.

[2] This refers to Essential Health Care Package of interventions and services which is recommended for different levels of health units in Uganda including control of communicable diseases like STD/HIV/AIDS, Malaria, TB, IMCI, Reproductive health, Immunization, Environmental Health, Health education, School Health, Epidemics & Disaster preparedness, Nutrition, Mental Health and essential Clinical care.

• Using this approach in a district will complement the first full-access confidential HB–CT project currently implemented through a local non-governmental organization (PA 04228, cooperative agreement U62/CCU024535). The project undertaken under this announcement will not duplicate or replace the project just mentioned.

III.2. Cost Sharing or Matching

Matching funds are not required for this program. Although matching funds are not required, preference will go to organizations that can leverage additional funds to contribute to program goals.

III.3. Other

If applicants request a funding amount greater than the ceiling of the award range, HHS/CDC will consider the application non-responsive, and it will not enter into the review process. We will notify you 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. We will notify you that your application did not meet submission requirements.

• HHS/CDC will consider late applications to be considered non-responsive. See section ''IV.3. Submission Dates and Times'' for more information on deadlines.

IV. Application and Submission Information

IV.1. Address to Request Application Package

To apply for this funding opportunity use application form PHS 5161–1.

HHS strongly encourages the applicant to submit your application electronically by using the forms and instructions posted for this announcement at *http://www.grants.gov.*

Application forms and instructions are available on the HHS/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 HHS/CDC Procurement and Grants Office Technical Information Management Section (PGO–TIM) staff at: 770–488–2700. We can mail application forms to you.

IV.2. Content and Form of Submission

Application: You must submit a project narrative with your application forms. You must submit the narrative in the following format:

• Maximum number of pages: 25. If your narrative exceeds the page limit, we will only review the first pages within the page limit.
• Font size: 12 point unreduced
• Double spaced
• 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.
• Pages should be numbered and a complete index to the application and any appendices must be included.
• Your application MUST be submitted in English.

Your narrative should address activities to be conducted over the entire project period, and must include the following items in the order listed:

• Project Context and Background (Understanding and Need)
• Project Strategy—Description and Methodologies
• Project Goals
• Project Outputs
• Project Contribution to the Goals and Objectives of the Emergency Plan for AIDS Relief
• Work Plan and Description of Project Components and Activities
• Performance Measures
• Timeline (*e.g.,* GANNT Chart)
• Management of Project Funds and Reporting.

You may include additional information in the application appendices. The appendices will not count toward the narrative page limit. This additional information includes the following:

• Project Budget and Justification
• Curriculum vitae of current staff who will work on the activity
• Job descriptions of proposed key positions to be created for the activity
• Quality-Assurance, Monitoring-and-Evaluation, and Strategic-Information Forms
• Applicant's Corporate Capability Statement
• Letters of Support
• Evidence of Legal Organizational Structure

The budget justification will not count in the narrative page limit.

Although the narrative addresses activities for the entire project, the applicant should provide a detailed budget only for the first year of activities, while addressing budgetary plans for subsequent years.

You must 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 HHS/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 could require you to submit additional documentation with your application are listed in section ''Administrative and National Policy Requirements.''

IV.3. Submission Dates and Times

Application Deadline Date: August 22, 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*. We consider applications completed on-line through Grants.gov as formally submitted when the applicant organization's Authorizing Official electronically submits the application to *http://www.grants.gov*. We will consider electronic applications as having met the deadline if the application organization's Authorizing Official has submitted the application electronically to Grants.gov on or before the deadline date and time.

If you submit your application electronically through Grants.gov (*http://www.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 HHS/CDC receives the application.

If you submit your application by the United States Postal Service or commercial delivery service, you must ensure the carrier will be able to guarantee delivery by the closing date and time. If HHS/CDC receives your submission after closing because: (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 have the opportunity to submit documentation of the carriers guarantee. If the documentation verifies

a carrier problem, HHS/CDC will consider the submission as received by the deadline.

If you submit a hard copy application, HHS/CDC will not notify you upon receipt of your submission. If you have a question about the receipt of your 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 us to process and log submissions. 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 we will discard it. We will notify you that you did not meet the submission requirements.

IV.4. Intergovernmental Review of Applications

Executive Order 12372 does not apply to this program.

IV.5. Funding Restrictions

Awardee may use funds for the following:

- Confidential HIV CT within the program District, including required training, purchase of test kits, simple laboratory refurbishment, vehicles and logistical support to testing teams, staffing and other related commodities and expenses. Awardee must perform all procurement in a competitive and transparent manner.
- Evaluation and management of the project activities.

Restrictions, which you must take into account while writing your budget, are as follows:

- Funds may not be used for research.
- Awards will not allow reimbursement of pre-award costs.
- You may not use funds for any new construction.
- Anti-retroviral drugs (ARVs)—purchase of ARVs, reagents, and laboratory equipment for antiretroviral treatment projects require pre-approval from HHS/CDC officials.
- Needle exchange—No funds appropriated under this solicitation shall be used to carry out any program of distributing sterile needles or syringes for the hypodermic injection of any illegal drug.
- Funds may be spent for reasonable program purposes, including personnel, travel, supplies, and services. Equipment may be purchased if deemed necessary to accomplish program objectives; however, you must request prior approval by HHS/CDC officials in writing, and you must perform all procurement in a competitive and transparent manner.
- All requests for funds contained in the budget in U.S. dollars. Once an award is made, HHS/CDC will not compensate foreign grantees for currency exchange fluctuations through the issuance of supplemental awards.
- The costs that are generally allowable in grants to domestic organizations are allowable to foreign institutions and international organizations, with the following exception: With the exception of the American University, Beirut and the World Health Organization, Indirect Costs will not be paid (either directly or through sub-award) to organizations located outside the territorial limits of the United States or to international organizations, regardless of their location.
- The applicant may contract with other organizations under this program; however the applicant must perform a substantial portion of the activities (including program management and operations, and delivery of prevention services for which funds are requested).
- You must obtain an annual audit of these HHS/CDC funds (program-specific audit) by a U.S.-based audit firm with international branches and current licensure/authority in-country, and in accordance with International Accounting Standard(s) or equivalent standard(s) approved in writing by HHS/CDC.
- A fiscal Recipient Capability Assessment may be required, prior to or post award, to review the applicant's business management and fiscal capabilities regarding the handling of U.S. Federal funds.
- Prostitution and Related Activities

The U.S. Government is opposed to prostitution and related activities, which are inherently harmful and dehumanizing, and contribute to the phenomenon of trafficking in persons.

Any entity that receives, directly or indirectly, U.S. Government funds in connection with this document (''recipient'') cannot use such U.S. Government funds to promote or advocate the legalization or practice of prostitution or sex trafficking. Nothing in the preceding sentence shall be construed to preclude the provision to individuals of palliative care, treatment, or post-exposure pharmaceutical prophylaxis, and necessary pharmaceuticals and commodities, including test kits, condoms, and, when proven effective, microbicides.

A recipient that is otherwise eligible to receive funds in connection with this document to prevent, treat, or monitor HIV/AIDS shall not be required to endorse or utilize a multisectoral approach to combating HIV/AIDS, or to endorse, utilize, or participate in a prevention method or treatment program to which the recipient has a religious or moral objection. Any information provided by recipients about the use of condoms as part of projects or activities that are funded in connection with this document shall be medically accurate and shall include the public health benefits and failure rates of such use.

In addition, any recipient must have a policy explicitly opposing prostitution and sex trafficking. The preceding sentence shall not apply to any ''exempt organizations'' (defined as the Global Fund to Fight AIDS, Tuberculosis and Malaria, the World Health Organization and its six Regional Offices, the International AIDS Vaccine Initiative or to any United Nations agency).

The following definition applies for purposes of this clause:

- Sex trafficking means the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act. 22 U.S.C. 7102(9).

All recipients must insert provisions implementing the applicable parts of this section, ''Prostitution and Related Activities,'' in all subagreements under this award. These provisions must be express terms and conditions of the subagreement, must acknowledge that compliance with this section, ''Prostitution and Related Activities,'' is a prerequisite to receipt and expenditure of U.S. Government funds in connection with this document, and must acknowledge that any violation of the provisions shall be grounds for unilateral termination of the agreement prior to the end of its term. Recipients must agree that HHS may, at any reasonable time, inspect the documents and materials maintained or prepared by the recipient in the usual course of its operations that relate to the organization's compliance with this section, ''Prostitution and Related Activities.''

All prime recipients that receive U.S. Government funds (''prime recipients'') in connection with this document must certify compliance prior to actual receipt of such funds in a written statement that makes reference to this document (*e.g.*, ''[Prime recipient's name] certifies compliance with the section, 'Prostitution and Related Activities.' '') addressed to the agency's grants officer. Such certifications by prime recipients are prerequisites to the payment of any U.S. Government funds in connection with this document.

Recipients' compliance with this section, ''Prostitution and Related Activities,'' is an express term and condition of receiving U.S. Government funds in connection with this document, and any violation of it shall be grounds for unilateral termination by HHS of the agreement with HHS in connection with this document prior to the end of its term. The recipient shall refund to HHS the entire amount furnished in connection with this document in the event HHS determines the recipient has not complied with this section, ''Prostitution and Related Activities.''

You may find guidance for completing your budget on the HHS/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:

HHS/CDC strongly encourages you 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. We will not accept e-mail submissions. If you are having technical difficulties in Grants.gov, you may reach them 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. eastern time, Monday through Friday.

HHS/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. We must receive any such paper submission in accordance with the requirements for timely submission detailed in Section IV.3. of the grant announcement.

You must clearly mark the paper submission: ''BACK-UP FOR ELECTRONIC SUBMISSION.''

The paper submission must conform to all requirements for non-electronic submissions. If we receive both electronic and back-up paper submissions by the deadline, we will consider the electronic version the official submission.

We strongly recommended that you submit your grant application by 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. You may find directions for creating PDF files on the Grants.gov Web site. Use of files other than Microsoft Office or PDF could make your file unreadable for our staff.

OR

Submit the original and two hard copies of your application by mail or express delivery service to the following address: Technical Information Management–AA009, CDC Procurement and Grants Office, U.S. Department of Health and Human Services, 2920 Brandywine Road, Atlanta, GA 30341.

V. Application Review Information

V.1. Criteria

Applicants must 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. Applicants must submit these measures of effectiveness with the application, and they will be an element of evaluation.

We will evaluate your application against the following criteria:

1. Understanding the issues, principles and systems requirements involved in delivering community and home-based confidential CT which provides access to the whole population of a district in the context of Uganda (25 points)

Does the applicant display knowledge of the five-year strategy and goals of the President's Emergency Plan, such that it can build on these to develop a comprehensive, collaborative project to reach underserved populations? Does the applicant demonstrate an understanding of the ethical, clinical, social, managerial and other practical issues involved in delivering comprehensive, confidential CT in a cost-effective and sensitive manner in the setting of a Ugandan district?

2. Ability to carry out the proposal (25 points)

Does the applicant demonstrate the capability to achieve the purpose of this proposal?

3. Work Plan (25 points)

Is the plan appropriate to the social, political and cultural context in Uganda? Does the applicant describe activities which are realistic, achievable, time-framed and culturally appropriate to complete this program in Uganda? Does the applicant describe strategies that are pertinent and match those identified in the five-year strategy of the President's Emergency Plan and the national HIV/AIDS strategy of the Government of the Republic of Uganda?

4. Personnel (15 points)

Are the personnel, including qualifications, training, availability, and experience adequate to carry out the proposed activities?

5. Management and Accounting Plan (10 points)

Is there a plan to manage the resources of the program, prepare reports, monitor and evaluate activities and audit expenditures? Is the plan to account for, prepare reports, monitoring and audit expenditures under this agreement adequate to manage the resources of the program and to produce, collect and analyze performance data?

6. Budget (not scored)

Is the budget for conducting the activity itemized, well-justified and consistent with the five-year strategy and goals of the President's Emergency Plan activities in Uganda, and the national HIV/AIDS strategy of the Government of the Republic of Uganda?

V.2. Review and Selection Process

The HHS/CDC Procurement and Grants Office (PGO) staff will review applications for completeness, and HHS Global AIDS program will review them for responsiveness. Incomplete applications and applications that are non-responsive to the eligibility criteria will not advance through the review process. Applicants will receive notification 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. All persons who serve on the panel will be external to the U.S. Government Country Program Office. The panel may include both Federal and non-Federal participants.

In addition, the following factors could affect the funding decision:

It is possible for one organization to apply as lead grantee with a plan that includes partnering with other organizations, preferably local. Although matching funds are not required, preference will be go to organizations that can leverage additional funds to contribute to program goals.

Applications will be funded in order by score and rank determined by the review panel. HHS/CDC will provide justification for any decision to fund out of rank order.

V.3. Anticipated Announcement and Award Dates

The 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–4 HIV/AIDS Confidentiality Provisions
- AR–6 Patient Care
- 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

Applicants can find additional information on these requirements on the HHS/CDC Web site at the following Internet address: *http://www.cdc.gov/od/pgo/funding/ARs.htm.*

You need to include an additional Certifications form from the PHS5161–1 application needs to be included in the Grants.gov electronic submission only. Please refer to *http://www.cdc.gov/od/pgo/funding/PHS5161-1-Certificates.pdf.* Once you have filled out the form, it should be attached to the Grants.gov submission as Other Attachments Form.

VI.3. Reporting Requirements

You must provide HHS/CDC with an original, plus two hard copies of the following reports:

1. Semi-annual progress reports not more than 30 days after the end of the reporting period.

2. 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, including progress against the numerical goals of the President's Emergency Plan for AIDS Relief for Uganda.

3. Financial status 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.

Recipients must mail these reports 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, U.S. Department of Health and Human Services, 2920 Brandywine Road, Atlanta, GA 30341, Telephone: 770–488–2700.

For program technical assistance, contact: Jonathan Mermin, MD, MPH, Global AIDS Program [GAP], Uganda Country Team, National Center for HIV, STD and TB Prevention, Centers for Disease Control and Prevention [CDC], HHS, PO Box 49, Entebbe, Uganda, Telephone: +256–41320776, E-mail: *jhm@cdc.gov.*

For financial, grants management, or budget assistance, contact: Shirley Wynn, Contract Specialist, CDC Procurement and Grants Office, U.S. Department of Health and Human Services, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone: 770–488–1515, E-mail: *zbx6@cdc.gov.*

VIII. Other Information

Applicants can find this and other HHS funding opportunity announcements on the HHS/CDC Web site, Internet address: *http://www.cdc.gov* (Click on ''Funding'' then ''Grants and Cooperative Agreements''), and on the Web site of the HHS Office of Global Health Affairs, Internet address: *http://www.globalhealth.gov.*

Dated: July 25, 2005.

William P. Nichols,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention, U.S. Department of Health and Human Services.

[FR Doc. 05–15003 Filed 7–28–05; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Expanding and Enhancing HIV Confidential and Voluntary Counseling and Testing Services in the Republic of Botswana

Announcement Type: New.

Funding Opportunity Number: CDC–RFA–AA175.

Catalog of Federal Domestic Assistance Number: 93.067.

Key Dates: Application Deadline: August 22, 2005.

I. Funding Opportunity Description

Authority: This program is authorized under Sections 307 and 317(k)(2) of the Public Health Service Act, [42 U.S.C. 242l], as amended, and under Public Law 108–25 (United States Leadership Against HIV/AIDS, Tuberculosis and Malaria Act of 2003) [U.S.C. 7601].

Background: President Bush's Emergency Plan for AIDS Relief has called for immediate, comprehensive and evidence-based action to turn the tide of global HIV/AIDS. The initiative aims to treat more than two million HIV-infected people with effective combination anti-retroviral therapy by 2008; care for ten million HIV-infected and affected persons, including those orphaned by HIV/AIDS, by 2008; and prevent seven million infections by 2010, with a focus on 15 priority countries, including 12 in sub-Saharan Africa. The five-year strategy for the Emergency Plan is available at the following Internet address: *http://www.state.gov/s/gac/rl/or/c11652.htm.*

Over the same time period, as part of a collective national response, the Emergency Plan goals specific to Botswana are to treat at least 33,000 HIV-infected individuals; and provide care for 165,000 HIV-affected individuals.

Purpose: The United States Government seeks to reduce the impact of HIV/AIDS in specific countries in sub-Saharan Africa, Asia and the Americas by working with governments and other key partners to assess the needs of each country and design a customized program of assistance that fits within the host nation's strategic plan.

The purpose of this funding announcement is to progressively build an indigenous, sustainable response to the national HIV epidemic in Botswana through the rapid expansion of innovative, culturally appropriate, high-quality HIV/AIDS prevention and care interventions.

Under the leadership of the U.S. Global AIDS Coordinator, as part of the President's Emergency Plan, the U.S. Department of Health and Human Services (HHS) works with host countries and other key partners to assess the needs of each country and design a customized program of assistance that fits within the host nation's strategic plan.

Specifically, the winner of this announcement will expand and enhance confidential HIV VCT services (including social marketing for promoting awareness and importance of testing) in Botswana, including rural areas. These services include referral of those testing positive to sources of ongoing psycho-social support and basic preventive and palliative care. The provision of anti-retroviral therapy (ART) is not part of this program, although patients who qualify for ART under medical criteria may receive referrals to treatment sites as they become available.

Monitoring and evaluation of all programs and services will be essential in measuring success of these activities. All of the program activities conducted in this cooperative agreement are part of The Emergency Plan.

Measurable outcomes of the program will be in alignment with the performance goals of the President's Emergency Plan and with the following performance goal for the CDC National Center for HIV, STD and TB Prevention within HHS: By 2010, work with other countries, international organizations, the U.S. Department of State, U.S. Agency for International Development (USAID), and other partners to achieve the United Nations General Assembly Special Session on HIV/AIDS goal of reducing prevalence among young people 15 to 24 years of age. Specific measurable outcomes of this program include, but are not be limited to, the number, age and sex of clients (individual and couples) provided with confidential HIV CT, unrecognized HIV infections discovered, the cost per client service and per unrecognized infection, and the number of persons with HIV successfully referred to an effective care or treatment provider.

This announcement is only for non-research activities supported by HHS, including the Centers for Disease Control and Prevention (CDC). If an applicant proposes research activities, HHS will not review the application. For the definition of research, please see the HHS/CDC web site at the following Internet address: *http://www.cdc.gov/od/ads/opspoll1.htm*.

Activities: Based on its competitive advantage and proven field experience, the winning applicant will undertake a broad range of activities to meet the numerical Emergency Plan targets outlined in this Program Announcement. For each of these activities, the grantee will give priority to evidence-based, yet culturally adapted, innovative approaches.

The awardee will either implement activities directly or through its subgrantees and/or subcontractors; the awardee will retain overall financial and programmatic management under the oversight of HHS/CDC and the strategic direction of the Office of the Global AIDS Coordinator. The awardee must show a measurable progressive reinforcement of the capacity of indigenous organizations and local communities to respond to the national HIV epidemic, as well as progress towards the sustainability of activities.

Applicants should describe activities in detail as part of a four-year action plan (U.S. Government Fiscal Years 2005–2008 inclusive) that reflects the policies and goals outlined in the five-year strategy for the President's Emergency Plan.

The grantee will produce an annual operational plan in the context of this four-year plan, which the U.S. Government Emergency Plan team on the ground in Botswana will review as part of the annual Emergency Plan for AIDS Relief Country Operational Plan review and approval process managed by the Office of the U.S. Global AIDS Coordinator. The grantee may work on some of the activities listed below in the first year and in subsequent years, and then progressively add others from the list to achieve all of the Emergency Plan performance goals, as cited in the previous section. HHS/CDC, under the guidance of the U.S. Global AIDS Coordinator, will approve funds for activities on an annual basis, based on documented performance toward achieving Emergency Plan goals, as part of the annual Emergency Plan for AIDS Relief Country Operational Plan review and approval process.

Awardee activities for this program are as follows:

1. Strengthen institutional capacity of VCT center network for provision of on-going confidential VCT services throughout Botswana.

2. Manage all aspects of confidential VCT service delivery, including administration, human resources, and monitoring and evaluation.

3. Provide social marketing for confidential VCT services.

4. Expand confidential HIV counseling and testing to remote areas and to special groups.

5. Work to link activities described here with related HIV care and other social services in the area, and promote coordination at all levels, including through bodies such as village, district, regional and national HIV coordination committees and networks of community-based, non-governmental and faith-based organizations.

6. Participate in relevant national technical coordination committees and in national process(es) to define, implement and monitor simplified small grants program(s)for faith- and community-based organizations, to ensure local stakeholders receive adequate information and assistance to engage and access effectively funding opportunities supported by the President's Emergency Plan and other donors.

7. Progressively reinforce the capacity of faith- and community-based organizations and village and district AIDS committees to promote quality, local ownership, accountability and sustainability of activities.

8. Develop and implement a project-specific participatory monitoring and evaluation plan by drawing on national and U.S. Government requirements and tools, including the strategic information guidance provided by the Office of the U.S. Global AIDS Coordinator.

Administration: Comply with all HHS management requirements for meeting participation and progress and financial reporting for this cooperative agreement. (See HHS Activities and Reporting sections below for details.) Comply with all policy directives established by the Office of the U.S. Global AIDS Coordinator.

In a cooperative agreement, HHS staff is substantially involved in the program activities, above and beyond routine grant monitoring.

HHS Activities for this program are as follows:

1. Support training of VCT counselors, development of tools for monitoring and evaluation of confidential counseling and testing programs, quality assurance, and competitive and transparent procurement of HIV rapid tests.

2. Expand age-appropriate supportive counseling, psychosocial support, and preventive counseling for children, adolescents and people with special needs. Interventions should emphasize abstinence for youth and other unmarried persons, mutual faithfulness and partner reduction for sexually active adults, and correct and consistent use of condoms by those whose behavior places them at risk for

transmitting or becoming infected with HIV.[1]

3. Facilitate the exchange of materials and expertise with regard to confidential counseling and testing services for populations engaged in high-risk behaviors.

4. Review and approve grantee's annual work plan and detailed budget, as part of the Emergency Plan for AIDS Relief Country Operational Plan review and approval process, managed by the Office of the U.S. Global AIDS Coordinator.

5. Strengthen confidential counseling and testing programs.

6. Organize an orientation meeting with the grantee to brief them on applicable U.S. Government, HHS, and Emergency Plan expectations, regulations and key management requirements, as well as report formats and contents. The orientation could include meetings with staff from HHS agencies and the Office of the U.S. Global AIDS Coordinator.

7. Review and approve the process used by the grantee to select key personnel and/or post-award subcontractors and/or subgrantees to be involved in the activities performed under this agreement, as part of the Emergency Plan for AIDS Relief Country Operational Plan review and approval process, managed by the Office of the U.S. Global AIDS Coordinator.

8. Review and approve grantee's annual work plan and detailed budget, as part of the Emergency Plan for AIDS Relief Country Operational Plan review and approval process, managed by the Office of the U.S. Global AIDS Coordinator.

9. Meet on a monthly basis with grantee to assess monthly expenditures in relation to approved work plan and modify plans as necessary.

10. Meet on a quarterly basis with grantee to assess quarterly technical and financial progress reports and modify plans as necessary.

11. Meet on an annual basis with grantee to review annual progress report for each U.S. Government Fiscal Year, and to review annual work plans and budgets for subsequent year, as part of the Emergency Plan for AIDS Relief review and approval process for Country Operational Plans, managed by the Office of the U.S. Global AIDS Coordinator.

12. Provide technical assistance, as mutually agreed upon, and revise annually during validation of the first and subsequent annual work plans. This could include expert technical assistance and targeted training activities in specialized areas, such as strategic information, project management, confidential counseling and testing, palliative care, treatment literacy, and adult learning techniques.

13. Provide in-country administrative support to help grantee meet U.S. Government financial and reporting requirements.

Please note: Either HHS staff or staff from organizations that have successfully competed for funding under a separate HHS contract, cooperative agreement or grant will provide technical assistance and training.

Measurable outcomes of the program will be in alignment with the following performance goals for the Emergency Plan:

A. Prevention

Number of individuals trained to provide HIV prevention interventions, including abstinence, faithfulness and, for populations engaged in high-risk behaviors,[2] correct and consistent condom use.

1. Abstinence (A) and Be Faithful (B)

- Number of community outreach and/or mass media (radio) programs that are A/B focused
- Number of individuals reached through community outreach and/or mass media (radio) programs that are A/B focused.

B. Care and Support

1. Confidential Counseling and Testing

- Number of patients who accept confidential counseling and testing in a health-care setting.
- Number of clients served, direct.
- Number of people trained in confidential counseling and testing, direct, including health-care workers.

2. Orphans and Vulnerable Children (OVC)

Number of service outlets/programs, direct and/or indirect.

- Number of clients (OVC) served, direct and/or indirect.
- Number of persons trained to serve OVC, direct.

3. Palliative Care: Basic Health Care and Support

- Number of service outlets/programs that provide palliative care, direct and/or indirect.
- Number of service outlets/programs that link HIV care with malaria and tuberculosis care and/or referral, direct and/or indirect.
- Number of clients served with palliative care, direct and/or indirect.
- Number of persons trained in providing palliative care, direct.

C. HIV Treatment With ART

- Number of clients enrolled in ART, direct and indirect.
- Number of persons trained in providing ART, direct.

D. Strategic Information

- Number of persons trained in strategic information, direct.

E. Expanded Indigenous Sustainable Response

- Project-specific quantifiable milestones to measure: a. Indigenous capacity-building. b. Progress toward sustainability.

II. Award Information

Type of Award: Cooperative Agreement.

HHS involvement in this program is listed in the Activities Section above.

Fiscal Year Funds: 2005.

Approximate Total Funding: $20,000,000 (This amount is an estimate, and is subject to change as additional funds become available.).

Approximate Number of Awards: One.

Approximate Average Award: $1,700,000 (This amount is for the first 6-month budget period.).

Floor of Award Range: None.

Ceiling of Award Range: $1,700,000.

Anticipated Award Date: August 31, 2005.

Budget Period Length: 12 month.

Project Period Length: Five years.

Throughout the project period, HHS'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

[1] Behaviors that increase risk for HIV transmission including engaging in casual sexual encounters, engaging in sex in exchange for money or favors, having sex with an HIV-positive partner or one whose status is unknown, using drugs or abusing alcohol in the context of sexual interactions, and using intravenous drugs. Women, even if faithful themselves, can still be at risk of becoming infected by their spouse, regular male partner, or someone using force against them. Other high-risk persons or groups include men who have sex with men and workers who are employed away from home.

[2] Behaviors that increase risk for HIV transmission including engaging in casual sexual encounters, engaging in sex in exchange for money or favors, having sex with an HIV-positive partner or one whose status is unknown, using drugs or abusing alcohol in the context of sexual interactions, and using intravenous drugs. Women, even if faithful themselves, can still be at risk of becoming infected by their spouse, regular male partner, or someone using force against them. Other high-risk persons or groups include men who have sex with men and workers who are employed away from home.

Federal Government, through the Emergency Plan for AIDS Relief review and approval process for Country Operational Plans, managed by the Office of the U.S. Global AIDS Coordinator.

III. Eligibility Information

III.1. Eligible Applicants

Public and private non-profit and for-profit organizations may submit applications, such as:

- Public non-profit organizations
- Private non-profit organizations
- For-profit organizations
- Community-based organizations
- Faith-based organizations
- Universities
- Colleges
- Hospitals
- Small, minority-owned, and women-owned businesses

In addition, applicants must meet the criteria listed below:

1. Be indigenous to Botswana
2. Have at least three years of VCT experience
3. Currently provide HIV confidential and voluntary counseling and testing services through a network of sites with a national geographical scope covering main cities, major towns and villages and rural areas of Botswana, such that at least 80% of the Botswana population has access to a VCT site within 50 km radius of their residence.
4. Be well-positioned to enhance and strengthen confidential and voluntary counseling and testing services for Botswana, particularly rural areas. An example may include engaging in a strategic planning process for enhancing and strengthening HIV testing services.
5. Be an active representative in District Multi-sectoral AIDS committees within Botswana. Applicants should provide a letter of support from the MOH.

III.2. Cost Sharing or Matching

Matching funds are not required for this program.

III.3. Other

If applicants request a funding amount greater than the ceiling of the award range, HHS/CDC will consider the application non-responsive, and it will not enter into the review process. We will notify you 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 enter into the review process. You will be notified that your application did not meet submission requirements.

- HHS/CDC will consider late applications to be non-responsive. See section ''IV.3. Submission Dates and Times'' for more information on deadlines.

IV. Application and Submission Information

IV.1. Address To Request Application Package

To apply for this funding opportunity use application form PHS 5161.

HHS strongly encourages you to submit your application electronically by using the forms and instructions posted for this announcement at *http://www.grants.gov.*

Application forms and instructions are available on the HHS/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. We can e-mail application forms to you.

IV.2. Content and Form of Submission

Application: You must submit a project narrative with your application forms. You must submit the narrative in the following format:

- Maximum number of pages: 25—If your narrative exceeds the page limit, we will only review the first pages within the page limit.
- Font size: 12 point unreduced.
- Double spaced.
- Paper size: 8.5 by 11 inches.
- Page margin size: One inch.
- Pages should be numbered.
- Printed only on one side of page.
- Appendices may be included.
- Held together only by rubber bands or metal clips; not bound in any other way.
- Submitted in English.

Your narrative should address activities to be conducted over the entire project period, and must include the following items in the order listed:

- Project Context and Background (Understanding and Need)
- Project Strategy—Description and Methodologies
- Project Goals
- Project Outputs
- Project Contribution to the Goals and Objectives of the Emergency Plan for AIDS Relief
- Work Plan and Description of Project Components and Activities
- Performance Measures
- Timeline (*e.g.,* GANNT Chart)
- Management of Project Funds and Reporting

You may include additional information in the application appendices. The appendices will not count toward the narrative page limit. This additional information includes the following:

- Project Budget and Justification
- Project Budget Notes
- Job Descriptions
- Testing Protocols
- Overview of HIV Counseling and Testing Quality Assurance Procedures, both Internal and External
- HIV Counseling and Testing Quality Assurance, Monitoring and Evaluation and Strategic Information Forms
- HIV Counseling and Testing Referral Procedures and Forms
- Mobile HIV Counseling and Testing Processes and Procedures
- HIV Counseling and Testing Staff Training Curricula
- Applicant's Corporate Capability Statement
- Letter of Support

The budget justification will not count in the narrative page limit.

Although the narrative addresses activities for the entire project, the applicant should provide a detailed budget only for the first year of activities, while addressing budgetary plans for subsequent years.

You must 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 HHS/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 could 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: August 22, 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*. We consider applications completed online through Grants.gov as formally submitted when the applicant organization's Authorizing Official electronically submits the application to *http://www.grants.gov.* We will consider electronic applications as having met the deadline if the applicant organization's Authorizing Official has submitted the application electronically 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 HHS/CDC receives the application.

If you submit your application by the United States Postal Service or commercial delivery service, you must ensure the carrier will be able to guarantee delivery by the closing date and time. If HHS/CDC receives your submission after closing because: (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 have the opportunity to submit documentation of the carriers guarantee. If the documentation verifies a carrier problem, HHS/CDC will consider the submission as received by the deadline.

If you submit a hard copy application, HHS/CDC will not notify you upon receipt of your submission. If you have a question about the receipt of your 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 us to process and log submissions.

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 we will discard it. We will notify you that you did not meet the submission requirements.

IV.4. Intergovernmental Review of Applications

Executive Order 12372 does not apply to this program.

IV.5. Funding Restrictions

Restrictions, which you must 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.
- Funds may be spent for reasonable program purposes, including personnel, travel, supplies, and services. Equipment may be purchased if deemed necessary to accomplish program objectives; however, prior approval by CDC officials must be requested in writing.
- All requests for funds contained in the budget shall be stated in U.S. dollars. Once an award is made, CDC will not compensate foreign grantees for currency exchange fluctuations through the issuance of supplemental awards.
- The costs that are generally allowable in grants to domestic organizations are allowable to foreign institutions and international organizations, with the following exception: With the exception of the American University, Beirut, and the World Health Organization, Indirect Costs will not be paid (either directly or through sub-award) to organizations located outside the territorial limits of the U.S. or to international organizations regardless of their location.
- The applicant may contract with other organizations under this program; however the applicant must perform a substantial portion of the activities (including program management and operations, and delivery of prevention services for which funds are required).
- You must obtain an annual audit of these CDC funds (program-specific audit) by a US-based audit firm with international branches and current licensure/authority in-country, and in accordance with International Accounting Standards or equivalent standards(s) approved in writing by CDC.
- A fiscal Recipient Capability Assessment may be required, prior to or post award, in order to review the applicant's business management and fiscal capabilities regarding the handling of U.S. Federal funds.
- Needle Exchange—No funds appropriated under this Act shall be used to carry out any program of distributing sterile needles or syringes for the hypodermic injection of any illegal drug.
- Prostitution and Related Activities

The U.S. Government is opposed to prostitution and related activities, which are inherently harmful and dehumanizing, and contribute to the phenomenon of trafficking in persons.

Any entity that receives, directly or indirectly, U.S. Government funds in connection with this document (''recipient'') cannot use such U.S. Government funds to promote or advocate the legalization or practice of prostitution or sex trafficking. Nothing in the preceding sentence shall be construed to preclude the provision to individuals of palliative care, treatment, or post-exposure pharmaceutical prophylaxis, and necessary pharmaceuticals and commodities, including test kits, condoms, and, when proven effective, microbicides. A recipient that is otherwise eligible to receive funds in connection with this document to prevent, treat, or monitor HIV/AIDS shall not be required to endorse or utilize a multisectoral approach to combating HIV/AIDS, or to endorse, utilize, or participate in a prevention method or treatment program to which the recipient has a religious or moral objection. Any information provided by recipients about the use of condoms as part of projects or activities that are funded in connection with this document shall be medically accurate and shall include the public health benefits and failure rates of such use.

In addition, any recipient must have a policy explicitly opposing prostitution and sex trafficking. The preceding sentence shall not apply to any ''exempt organizations'' (defined as the Global Fund to Fight AIDS, Tuberculosis and Malaria, the World Health Organization and its six Regional Offices, the International AIDS Vaccine Initiative or to any United Nations agency).

The following definition applies for purposes of this clause:

- Sex trafficking means the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act. 22 U.S.C. 7102(9).

All recipients must insert provisions implementing the applicable parts of this section, ''Prostitution and Related Activities,'' in all subagreements under this award. These provisions must be express terms and conditions of the subagreement, must acknowledge that compliance with this section, ''Prostitution and Related Activities,'' is a prerequisite to receipt and expenditure of U.S. government funds in connection with this document, and must acknowledge that any violation of the provisions shall be grounds for unilateral termination of the agreement prior to the end of its term. Recipients must agree that HHS may, at any reasonable time, inspect the documents and materials maintained or prepared by the recipient in the usual course of

its operations that relate to the organization's compliance with this section, ''Prostitution and Related Activities.''

All prime recipients that receive U.S. Government funds (''prime recipients'') in connection with this document must certify compliance prior to actual receipt of such funds in a written statement that makes reference to this document (e.g., ''[Prime recipient's name] certifies compliance with the section, 'Prostitution and Related Activities.' '') addressed to the agency's grants officer. Such certifications by prime recipients are prerequisites to the payment of any U.S. Government funds in connection with this document.

Recipients' compliance with this section, ''Prostitution and Related Activities,'' is an express term and condition of receiving U.S. Government funds in connection with this document, and any violation of it shall be grounds for unilateral termination by HHS of the agreement with HHS in connection with this document prior to the end of its term. The recipient shall refund to HHS the entire amount furnished in connection with this document in the event HHS determines the recipient has not complied with this section, ''Prostitution and Related Activities.''

You can find guidance for completing your budget on the HHS/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: HHS/CDC strongly encourages you 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. We will not accept e-mail submissions. If you are having technical difficulties in Grants.gov, you may reach them by e-mail at *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. Eastern Time, Monday through Friday.

HHS/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. We must receive any such paper submission in accordance with the requirements for timely submission detailed in Section IV.3. of the grant announcement.

You must clearly mark the paper submission: ''BACK-UP FOR ELECTRONIC SUBMISSION.''

The paper submission must conform to all requirements for non-electronic submissions. If we receive both electronic and back-up paper submissions by the deadline, we will consider the electronic version the official submission.

We strongly recommended that you submit your grant application by 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. You may find directions for creating PDF files on the Grants.gov Web site. Use of files other than Microsoft Office or PDF could make your file unreadable for our staff.

OR

Submit the original and two hard copies of your application by mail or express delivery service to the following address: Technical Information Management–AA175, CDC Procurement and Grants Office, U.S. Department of Health and Human Services, 2920 Brandywine Road, Atlanta, GA 30341.

V. Application Review Information

V.1. Criteria

Applicants must 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. Applicants must submit these measures of effectiveness with the application, and they will be an element of evaluation.

We will evaluate your application against the following criteria:

1. Ability to carry out the proposal (30 points) Does the applicant demonstrate the local experience and capability to achieve the goals of the project? Do the staff members have appropriate experience? Are the staff roles clearly defined? Does the applicant currently have the capacity to reach rural populations?

2. Understanding the national HIV/AIDS response and cultural and political context in Botswana and fitting into the five-year strategy and goals of the President's Emergency Plan, as well as the issues, principles and systems requirements involved in carrying out the project (30 points)

Does the applicant demonstrate an understanding of the issues, principles and systems requirements to carry out the project? Does the applicant demonstrate an understanding of the national cultural and political context and the technical and programmatic areas covered by the project? Does the applicant display knowledge of the five-year strategy and goals of the President's Emergency Plan, such that it can build on these to develop a comprehensive, collaborative project to reach underserved populations in Botswana and meet the goals of the Emergency Plan?

3. Work Plan (20 points)

Does the applicant describe activities that are evidence-based, realistic, achievable measurable and culturally appropriate in Botswana to achieve the goals of the Emergency Plan and of the program? Does the applicant describe strategies that are pertinent and match those identified in the five-year strategy of the President's Emergency Plan?

4. Management and Accounting Plan (20 points)

Is there a plan to prepare reports, monitor and evaluate activities, audit expenditures and manage the resources of the program?

5. Budget (not scored)

Is the budget for conducting the program itemized, well-justified and consistent with the five-year strategy and goals of the President's Emergency Plan and Emergency Plan activities in Botswana?

V.2. Review and Selection Process

The HHS/CDC Procurement and Grants Office (PGO) staff will review applications for completeness, and HHS Global AIDS program will review them for responsiveness. Incomplete applications and applications that are non-responsive to the eligibility criteria will not advance through the review process. Applicants will receive notification 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. All persons who serve on the panel will be external to the U.S. Government Country Program Office. The panel may include both Federal and non-Federal participants.

In addition, the following factors could affect the funding decision:

It is possible for one organization to apply as lead grantee with a plan that includes partnering with other organizations, preferably local. Although matching funds are not required, preference will be go to organizations that can leverage

additional funds to contribute to program goals.

Applications will be funded in order by score and rank determined by the review panel. HHS/CDC will provide justification for any decision to fund out of rank order.

V.3. Anticipated Announcement and Award Dates

August 31, 2005.

VI. Award Administration Information

VI.1. Award Notices

Successful applicants will receive a Notice of Award (NoA) from the HHS/CDC Procurement and Grants Office. The NoA shall be the only binding, authorizing document between the recipient and HHS/CDC. An authorized Grants Management Officer will sign the NoA and mail it 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

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–4 HIV/AIDS Confidentiality Provisions.
- AR–6 Patient Care.
- AR–10 Smoke-Free Workplace Requirements.

Applicants can find additional information on these requirements on the HHS/CDC web site at the following Internet address: *http://www.cdc.gov/od/pgo/funding/ARs.htm*.

You need to include an additional Certifications form from the PHS 5161–1 application in your Grants.gov electronic submission only. Please refer to *http://www.cdc.gov/od/pgo/funding/PHS5161-1-Certificates.pdf*. Once you have filled out the form, please attach it to your Grants.gov submission as Other Attachment Forms.

VI.3. Reporting Requirements

You must provide HHS/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, including progress against the numerical goals of the President's Emergency Plan for AIDS Relief for Botswana.

f. Additional Requested Information.

2. Annual Progress Report and Financial Status 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.

Recipients must mail these reports to the Grants Management 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, U.S. Department of Health and Human Services, 2920 Brandywine Road, Atlanta, GA 30341. Telephone: 770–488–2700.

For program technical assistance, contact: Thierry Roels, Project Officer, Plot 5348 Ditlhakore Way, Extension 12, Gaborone. Telephone: (267)–390–1696 Extension 208. E-mail: *tbr6@botusa.org*.

For financial, grants management, or budget assistance, contact: Shirley Wynn, Grants Specialist, CDC Procurement and Grants Office, U.S. Department of Health and Human Services, 2920 Brandywine Road, Atlanta, GA 30341. Telephone: 770–488–1515. E-mail: *Swynn@cdc.gov*.

VIII. Other Information

Applicants can find this and other HHS funding opportunity announcements on the HHS/CDC Web site, Internet address: *www.cdc.gov*. Click on ''Funding'' then ''Grants and Cooperative Agreements,'' and on the Web site of the HHS Office of Global Health Affairs, Internet address: *http://www.globalhealth.gov*.

Dated: July 25, 2005.

William P. Nichols,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention, U.S. Department of Health and Human Services.

[FR Doc. 05–15006 Filed 7–28–05; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–906]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the Agency's function; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* The Fiscal Soundness Reporting Requirements and Supporting Regulations in 42 CFR 422.516; *Form Nos.:* CMS–906 (OMB # 0938–0469); *Use:* The information in this collection will be used by the financial staff to examine their respective organizations that they oversee to insure the organizations are maintaining at least the minimum financial performance. The respondents are the Medicare Advantage Organizations contracting with CMS; *Frequency:* Annually; *Affected Public:* Business or other for-profit; *Number of Respondents:* 370; *Total Annual Responses:* 370; *Total Annual Hours:* 62.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS Web Site address at *http://www.cms.hhs.gov/regulations/pra/*, or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov*, or call the Reports Clearance Office on (410) 786–1326.

Written comments and recommendations for the proposed information collections will be considered if they are mailed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Christopher Martin, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: July 20, 2005.

Michelle Shortt,

Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 05–14917 Filed 7–28–05; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Children's Justice Act Grants (CJA).

OMB No.: 0980–0196.

Description: The Program Instruction, prepared in response to the Children's Justice Act and authorized by the Child Abuse Prevention and Treatment Act (CAPTA) as set forth in Title II of Pub. L. 108–36, Child Abuse Prevention and Treatment Act Amendments of 2003, and in the process of reauthorization, provides direction to States and Territories to accomplish the purposes of assisting States in developing, establishing and operating programs designed to improve: (1) The handling of child abuse and neglect cases, particularly child sexual abuse and exploitation, in a manner that limits additional trauma to the child victim; (2) the handling of cases of suspected child abuse or neglect-related fatalities; (3) the investigation and prosecution of cases of child abuse and neglect, particularly child sexual abuse and exploitation; and (4) the handling of cases involving children with disabilities or serious health-related problems who are victims of abuse and neglect. This Program Instruction contains information collection requirements that are found in Public Law 108–36 at Sections 107(b), 107(d). The information being collected is required by statute to be submitted pursuant to receiving a grant award.

The information submitted will be used by the agency to ensure compliance with the statute; to monitor, evaluate and measure grantee achievements in addressing the investigation and prosecution of child abuse and neglect; and to report to Congress.

Respondents: State Governments.

ANNUAL BURDEN ESTIMATES

Instrument	No. of respondents	No. of responses per respondent	Average burden hours per response	Total burden hours
Application	52	1	40	2,080
Annual Performance Report	52	1	20	1,040

Estimated Total Annual Burden Hours: 3,120.

Additional Information: Copies of the proposed collection may be obtained by writing to The Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. E-mail: *grjohnson@acf.hhs.gov*.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, E-mail address: *Katherine T. Astrich@omb.eop.gov*.

Dated: July 25, 2005.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 05–14994 Filed 7–28–05; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the meeting of the President's Cancer Panel.

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 off the meeting.

Name of Committee: President's Cancer Panel.

Date: August 26, 2005.

Open: August 26, 2005 8 a.m. to 4 p.m.

Agenda: Cancer Survivorship: Treatment Records, Follow-up, and HIPPA.

Place: The Washington Marriott Hotel, 1221 22nd Street, NW., Washington, DC 20037.

Contact Person: Abby Sandler, PhD, Executive Secretary, National Cancer Institute, National Institutes of Health, Building 6116, Room 212, 6116 Executive Boulevard, Bethesda, MD 20892, (301) 451–9399.

Any interested person may file written comments with the committee by forwarding the comments to the Contact Person listed on this notice. The comments should include the name, address, telephone number and, when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center home page: *http://deainfo.nci.nih.gov/advisory/pcp/pcp.htm,* where an agenda and any additional information for the meeting will be posted when available.

(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: July 20, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–14997 Filed 7–28–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Cancer Institute Director's Consumer Liaison Group.

The meeting will be open to the public, 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

Name of Committee: National Cancer Institute Director's Consumer Liaison Group.

Date: September 14–15, 2005.

Time: 10 a.m. to 4 p.m.

Agenda: 1. Reports from NCI: Strategic Planning and Consumer Advocates in Research and Related Activities; 2. Report from NIH: Knowledge Management; 3. NCI Listens and Learns Web Site; 4. Update on Summit Planning; 5. Listens and Learns Working Group Meetings; 6 Meeting with NCI Leadership; 7. Public Comment; 8. Next Steps.

Place: Marriott Residence Inn Bethesda Downtown, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Brooke Hamilton, Executive Secretary, Office of Liaison Activities, National Institutes of Health, National Cancer Institute, 6116 Executive Blvd., Suite 220, MSC 8324, Bethesda, MD 20892, 301–435–3855, *hamiltbr@mail.nih.gov*.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *deainfo.nci.nih.gov/advisory/dclg/dclg.htm*, where an agenda and any additional information for the meeting will be posted when available.

(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: July 25, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–15089 Filed 7–28–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; 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 Research Resources 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/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 Research Resources Council.

Date: September 15, 2005.

Open: 8:30 a.m. to 12 p.m.

Agenda: NCRR Director's report and other business of the Council.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 10, Bethesda, MD 20892.

Closed: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 10, Bethesda, MD 20892.

Contact Person: Louise E. Ramm, PhD, Deputy Director, National Center for Research Resources, National Institutes of Health, Building 31, Room 3B11, Bethesda, MD 20892, 301–496–6023.

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.ncrr.nih.gov/newspub/minutes.htm*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research; 93.371, Biomedical Technology; 93.389, Research Infrastructure, 93.306, 93.333, National Institutes of Health, HHS)

Dated: July 25, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–15090 Filed 7–28–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; 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 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 Heart, Lung, and Blood Institute Special Emphasis Panel, Review of Research Program Project Applications (PO1s).

Date: September 7, 2005.

Time: 9 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Madera, 1310 New Hampshire Avenue, Washington, DC 20036.

Contact Person: Keith A. Mintzer, Scientific Review Administrator, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, Room 7186, MSC 7924, Bethesda, MD 20892, (301) 435–0280.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Specialized Centers of Clinically-Oriented Research in Vascular Injury, Repair, and Remodeling.

Date: September 22–23, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Sheraton Columbia Hotel, 10207 Wincopin Circle, Columbia, MD 21044.

Contact Person: Shelley S Sehnert, PhD, Scientific Review Administrator, Review Branch, NIH/NHLBI, 6701 Rockledge Drive, Room 7206, Bethesda, MD 20892–7924, (301) 435–0303, *ssehnert@nhlbi.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: July 20, 2005

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–14998 Filed 7–28–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of 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 Alcohol Abuse and Alcoholism.

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 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/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 Alcohol Abuse and Alcoholism.

Date: September 14–15, 2005.

Closed: September 14, 2005, 5:30 p.m. to 7:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Fishers Building Conference Center, Fishers Lane Building, 5635 Fishers Lane, Terrance Level, Rockville, MD 20852.

Open: September 15, 2005, 9 a.m. to 2:30 p.m.

Agenda: Program reports and presentations; Business of the Council.

Place: Fishers Building Conference Center, Fishers Lane Building, 5635 Fishers Lane, Terrance Level, Rockville, MD 20852.

Contact Person: Karen P. Peterson, PhD, Executive Secretary NIAAA Council, National Institute of Alcohol Abuse, and Alcoholism, National Institutes of Health, Bethesda, MD 20892–7003, (301) 451–3883, *kp177z@nih.gov.*

Any member of the public interested in presenting oral comments to the committee may notify the Contact Person listed on this notice at least 10 days in advance of the meeting. Interested individuals and representatives of organizations may submit a letter of intent, a brief description of the organization represented, and a short description of the oral presentation. Only one representative of an organization may be allowed to present oral comments and if accepted by the committee, presentations may be limited to five minutes. Both printed and electronic copies are requested for the record. In addition, any interested person may file written comments with the committee by forwarding their 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.

Information is also available on the Institute's/Center's home page: *silk.nih.gov/silk/niaaa1/about/roster.htm*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: July 20, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–14995 Filed 7–28–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel, ZAA1 HH (41)–R13 APPLICATION.

Date: August 4, 2005.

Time: 10 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 5635 Fishers Lane, 3132, Bethesda, MD 20892.

Contact Person: Lorraine Gunzerath, PhD, MBA, Scientific Review Administrator, National Institute on Alcohol Abuse and Alcoholism, Office of Extramural Activities, Extramural Project Review Branch, 5635 Fishers Lane, Room 3043, Bethesda, MD 20892–9304, 301–443–2369, *lgunzera@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel, ZAA1 HH (60)–Center Grant Applications (P's).

Date: August 15, 2005.

Time: 3 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Fisher's Building, 5635 Fishers Lane, 33002–3004, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Lorraine Gunzerath, PhD, MBA, Scientific Review Administrator, National Institute on Alcohol Abuse and Alcoholism, Office of Extramural Activities, Extramural Project Review Branch, 5635 Fishers Lane, Room 3043, Bethesda, MD 20892–9304, 301–443–2369, *lgunzera@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel, ZAA1 CC (47)–R01 APPLICATIONS.

Date: August 18, 2005.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 5635 Fishers Lane, 3037, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Mahadev Murthy, PhD, MBA, Scientific Review Administrator, Extramural Project Review Branch, Office of Extramural Activities, National Institute on Alcohol Abuse, and Alcoholism, MSC 9304, Room 3037, Bethesda, MD 20892–9304, 301–443–0800, *mmurthy@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. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: July 20, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–14996 Filed 7–28–05; 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 Research Project—Cooperative Agreements (U01s).

Date: August 3, 2005.

Time: 8 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Eric H. Brown, PhD, Scientific Review Administrator, National Institute of Arthritis and Musculoskeletal and Skin Diseases, National Institutes of Health, 6701 Democracy Blvd., Room 824, MSC 4872, Bethesda, MD 20892–4874, (301) 594–4955, *browneri@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. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: July 25, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–15081 Filed 7–28–05; 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 Comprehensive Center (P60s).

Date: August 23–24, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Yan Z Wang, MD, 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, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: July 25, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–15082 Filed 7–28–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Nursing Research, Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Nursing Research Special Emphasis Panel NINR Individual Predoctoral Fellowship and Mentored Scientist Development Awards.

Date: August 3, 2005.

Time: 12 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Nursing Research/NIH, One Democracy Plaza, 6701 Democracy Boulevard, Room 712, Bethesda, MD 20814, (Telephone Conference Call).

Contact Person: Jeffrey M. Chernak, PhD, Scientific Review Administrator, Office of Review, Division of Extramural Activities, National Institute of Nursing Research/NIH, 6701 Democracy Plaza, Suite 712, MSC 4870, Bethesda, MD 20817, (301) 402–6959, *chernak@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 Nursing Research Special Emphasis Panel NINR Individual Predoctoral Fellowship and Mentored Scientist Development Awards.

Date: August 9, 2005.

Time: 2:15 p.m. to 3:15 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Nursing Research/NIH, One Democracy Plaza, 6701 Democracy Boulevard, Room 713, Bethesda, MD 20814, (Telephone Conference Call).

Contact Person: John Richters, PhD, Scientific Review Administrator, Office of Review, Division of Extramural Activities, National Institute of Nursing Research/NIH, 6701 Democracy Blvd., Room 713, MSC 4870, Bethesda, MD 20817, (301) 594–5971, *jrichters@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 Nursing Research Special Emphasis Panel

NINR Individual Predoctoral Fellowship Awards.

Date: August 9, 2005.

Time: 12 p.m. to 12:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Room 713, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: John E. Richters, PhD, Scientific Review Administrator, Office of Review, Division of Extramural Activities, National Institute of Nursing Research/NIH, 6701 Democracy Blvd., Room 713, MSC 4870, Bethesda, MD 20817, (301) 594–5971, *jrichters@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. 93.361, Nursing Research, National Institutes of Health, HHS)

Dated: July 25, 2005.

Anthony M. Coelho, Jr., PhD,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–15084 Filed 7–28–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussion 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, Health Policies and Infant Mortality—R03 Phone Review.

Date: August 1, 2005.

Time: 2 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: Carla T. Walls, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5B01, Bethesda, MD 20892, (301) 435–6898, *wallsc@mail.nih.gov.*

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: July 25, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–15085 Filed 7–28–05; 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 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 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 General Medical Sciences Special Emphasis Panel Minority Biomedical Research Support RISE and SCORE.

Date: August 4, 2005.

Time: 3 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, NIGMS, NATCHER, 45 Center Drive, 3AN12F, Bethesda, MD 20852, (Telephone Conference Call).

Contact Person: Helen R. Sunshine, PHD, Chief, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 3AN12F, Bethesda, MD 20892, (301) 594–2881, *sunshinh@nigms.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. 93.375, 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: July 25, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–15086 Filed 7–28–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of 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, NIAAA.

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, disucssion, and evaluation of individual intramural programs and projects conducted by the National Institute on Alcohol Abuse and Alcoholism, 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, NIAAA.

Date: September 22–23, 2005.

Open: September 22, 2005, 7:45 a.m. to 8 a.m.

Agenda: To review and evaluate Board of Scientific Counselors Administrative Procedures.

Place: National Institutes of Health, National Institute on Alcohol Abuse & Alcoholism, 5625 Fishers Lane, 5N13, Rockville, MD 20892.

Closed: September 22, 2005, 8 a.m. to 5 p.m.

Agenda: To review and evaluate sections of the Laboratory of Membrane, Biochemistry,

and Biophysics (LMBB); the Laboratory of Metabolic Control (LMC); and the Laboratory of Neurogenetics (LNG).

Place: National Institutes of Health, National Institute on Alcohol Abuse & Alcoholism, 5625 Fishers Lane, 5N13, Rockville, MD 20892.

Closed: September 23, 2005, 8 a.m. to 4 p.m.

Agenda: To review and evaluate sections of the Laboratory of Membrane, Biochemistry, and Biophysics (LMBB); the Laboratory of Metabolic Control (LMC); and the Laboratory of Neurogenetics (LNG).

Place: National Institutes of Health, National Institute on Alcohol Abuse & Alcoholism, 5625 Fishers Lane, 5N13, Rockville, MD 20892.

Contact Person: Brenda L. Sandler, Chief, Administrative Services Branch, NIAAA, 5635 Fishers Lane, MSC 9304, Bethesda, MD 20892–9304, (301) 402–9386, *sandlerb@niaaa.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.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Program; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: July 25, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–15087 Filed 7–28–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following 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 Mental Health Special Emphasis Panel; SBIR Phase 2 Topic 043.

Date: August 22, 2005.

Time: 12:30 p.m. to 3 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call.)

Contact Person: Henry J. Haigler, PhD., Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Rm. 6150, MSC 9608, Bethesda, MD 20892–9608, (301) 443–7216. *hhaigler@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: July 25, 2005

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–15088 Filed 7–28–05; 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, Statistical Genetics.

Date: July 27, 2005.

Time: 8 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: The Watergate, 2650 Virginia Avenue, NW., Washington, DC 20037.

Contact Person: Michael M. Sveda, PhD, Scientific Review Administrator, National Institutes of Health, 6701 Rockledge Drive, Room 5152, MSC 7842, Bethesda, MD 20892, (301) 435–3565, *svedam@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, Two Immunology-related Grant Applications.

Date: August 2, 2005.

Time: 11 a.m. to 1 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: Mary Bell, PhD, Scientific Review Administrator, National Institutes of Health, 6701 Rockledge Drive, Room 6188, MSC 7804, Bethesda, MD 20892, (301) 451–8754, *bellmar@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: Prokaryote Gene Regulation.

Date: August 2, 2005.

Time: 3 p.m. to 4 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: Timothy J. Henry, PhD, Scientific Review Administrator, National Institutes of Health, 6701 Rockledge Drive, Room 3212, MSC 7808, Bethesda, MD 20892, (301) 435–1147, *henryt@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 Immunology: B and T Cell Development and Memory, Development of Bispecific Antibodies.

Date: August 4, 2005.

Time: 3 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: Samuel C. Edwards, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4200, MSC 7812, Bethesda, MD 20892, (301) 435–1152, *edwardss@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, Molecular Mechanisms Regulating Metastasis.

Date: August 5, 2005.

Time: 11 a.m. to 12 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: Elaine Sierra-Rivera, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6184, MSC 7804, Bethesda, MD 20892, (301) 435–1779, *riverase@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: Phage Control of Lysis.

Date: August 9, 2005.

Time: 1 p.m. to 2 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: Timothy J. Henry, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3212, MSC 7808, Bethesda, MD 20892, (301) 435–1147, *henryt@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: July 20, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–14999 Filed 7–28–05; 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, Infectious Diseases, Reproductive Health, Asthma and Pulmonary Conditions Member Conflicts.

Date: August 3, 2005.

Time: 2 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: Mary Ann Guadagno, PhD, Scientific Review Administrator, Center Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3170, MSC 7770, Bethesda, MD 20892, (301) 451–8011, *guadagma@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, Host Defense and Microbial Pathogenesis.

Date: August 17, 2005.

Time: 2 p.m. to 4:00 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: Melody Mills, PhD, Scientific Review Administrator, Center Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3204, MSC 7808, Bethesda, MD 20892, (301) 435–0903, *millsm@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: July 25, 2005.

Anthony M. Coelho, Jr.

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–15083 Filed 7–28–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Center for Substance Abuse Prevention; Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the SAMHSA Center for Substance Abuse Prevention (CSAP) National Advisory Council on August 16–17, 2005.

A portion of the meeting will be open to the public. The meeting will include a rollcall, general announcements, and discussion of the Center's policy issues and current administrative, legislative and program developments.

The meeting will also include the review, discussion, and evaluation of grant applications. Therefore, a portion of the meeting will be closed to the public as determined by the SAMHSA Administrator in accordance with Title 5 U.S.C. 522(c)(6) and 5 U.S.C. App. 2, Section 10(d).

A roster of the Council members, the transcript of the open session, and the minutes of the meeting may be obtained either by accessing the SAMHSA/CSAP Council Web site, *www.samhsa.gov/council/csap/csapnac.aspx* as soon as possible after the meeting or by communicating with the contact listed below. Additional information for this meeting may be obtained by contacting the individual listed below.

Committee Name: Substance Abuse and Mental Health Services Administration Center for Substance Abuse Prevention National Advisory Council.

Date: Wednesday, August 16, 2005. Thursday, August 17, 2005.

Place: 1 Choke Cherry Road, Sugarloaf Conference Room, Rockville, Maryland 20857.

Type: Closed: August 16, 2005, 12 p.m.–3:30 p.m. Open: August 17, 2005, 9 a.m.–3 p.m.

Contact: Roe Wilson, 1 Choke Cherry Road, Room 4–1057, Rockville, Maryland 20857, Telephone: (240) 276–2420, Fax: (240) 276–2430, E-mail: *roe.wilson@samhsa.hhs.gov.*

Dated: July 22, 2005.

Toian Vaughn,

Committee Management Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 05–15005 Filed 7–28–05; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Automated Commercial Environment (ACE): National Customs Automation Program Test of Automated Truck Manifest for Truck Carrier Accounts; Deployment Schedule

AGENCY: Customs and Border Protection; Department of Homeland Security.

ACTION: General notice.

SUMMARY: The Bureau of Customs and Border Protection, in conjunction with the Department of Transportation, Federal Motor Carrier Safety

Administration, is currently conducting a National Customs Automation Program (NCAP) test concerning the transmission of automated truck manifest data. This document announces the next two groups, or clusters, of ports to be deployed for this test.

EFFECTIVE DATES: The cluster of ports identified individually in this notice, deploying in the State of Arizona, was deployed as of July 25, 2005. The cluster of ports identified individually in this notice, deploying in the State of North Dakota, will be deployed as of August 15, 2005. Comments concerning this notice and all aspects of the announced test may be submitted at any time during the test period.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Fitzpatrick via e-mail at *Thomas.Fitzpatrick@dhs.gov.*

SUPPLEMENTARY INFORMATION:

Background

The National Customs Automation Program (NCAP) test concerning the transmission of automated truck manifest data for truck carrier accounts was announced in a General Notice published in the **Federal Register** (69 FR 55167) on September 13, 2004. That notice stated that the test of the Automated Truck Manifest will be conducted in a phased approach, with primary deployment scheduled for no earlier than November 29, 2004. The document identified the ports of Blaine, Washington, and Buffalo, New York, as the original deployment sites.

The September 13, 2004, notice stated that subsequent deployment of the test will occur at Champlain, New York; Detroit, Michigan; Laredo, Texas; Otay Mesa, California; and Port Huron, Michigan, on dates to be announced. The notice stated that the Bureau of Customs and Border Protection (CBP) would announce the implementation and sequencing of truck manifest functionality at these ports as they occur. The test is to be expanded eventually to include ACE Truck Carrier Account participants at all land border ports, and subsequent releases of ACE will include all modes of transportation. The September 13, 2004, notice announced that additional participants and ports will be selected throughout the duration of the test.

Implementation of the Test

The test commenced in Blaine, Washington in December 2004, but not at Buffalo, New York. In light of experience with the implementation of the test in Blaine, Washington, CBP decided to change the implementation schedule and published a General Notice in the **Federal Register** on May 31, 2005 (70 FR 30964) announcing the changes.

As noted in the May 31, 2005, General Notice, the next deployment sites will be brought up as clusters. One site in the cluster will be identified as the ''model site'' for the cluster. This deployment strategy will allow for more efficient equipment set-up, site checkouts, port briefings and central training.

The ports identified belonging to the first cluster announced in the May 31, 2005, General Notice included the original port of implementation Blaine, Washington. Sumas, Washington, was designated as the model port. The other ports of deployment in the cluster included the following: Point Roberts, WA; Oroville, WA (including sub ports); Boundary, WA; Danville, WA; Ferry, WA; Frontier, WA; Laurier, WA; Metaline Falls, WA; Nighthawk, WA; and Lynden, WA.

New Clusters

Through this Notice, CBP announces the next two clusters of ports to be brought up for purposes of implementation of the test. The test was deployed as of July 25, 2005 at the following ports in the State of Arizona: Douglas, AZ; Naco, AZ; Lukeville, AZ; Sasabe, AZ; and Nogales, AZ. Douglas, AZ, will be the model port for this cluster. The cluster of ports in the State of North Dakota, at which the test will be deployed on August 15, 2005, will consist of: Pembina, ND; Neche, ND; Noyes, ND; Walhalla, ND; Maida, ND; Hannah, ND; Sarles, ND; and Hansboro, ND. Pembina, ND, will be the model port for this cluster.

Previous NCAP Notices Not Concerning Deployment Schedules

On Monday, March 21, 2005, a General Notice was published in the **Federal Register** (70 FR 13514) announcing a modification to the NCAP test to clarify that all relevant data elements are required to be submitted in the automated truck manifest submission. That notice did not announce any change to the deployment schedule and is not affected by publication of this notice. All requirements and aspects of the test, as set forth in the September 13, 2004 notice, as modified by the March 21, 2005 notice, continue to be applicable.

Dated: July 20, 2005.

Jayson P. Ahern,

Assistant Commissioner, Office of Field Operations.

[FR Doc. 05–15046 Filed 7–28–05; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1593–DR]

Alabama; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Alabama (FEMA–1593–DR), dated July 10, 2005, and related determinations.

EFFECTIVE DATE: July 16, 2005.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective July 16, 2005.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050 Individuals and Households Program-Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 05–15029 Filed 7–28–05; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1593–DR]

Alabama; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Alabama (FEMA–1593–DR), dated July 10, 2005, and related determinations.

EFFECTIVE DATE: July 21, 2005.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Under Secretary for Emergency Preparedness and Response, Department of Homeland Security, under Executive Order 12148, as amended, Michael Bolch, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

This action terminates my appointment of James N. Russo as Federal Coordinating Officer for this disaster.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050 Individuals and Households Program-Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 05–15030 Filed 7–28–05; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1595–DR]

Florida; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Florida (FEMA–1595–DR), dated July 10, 2005, and related determinations.

EFFECTIVE DATE: July 20, 2005.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Florida is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 10, 2005:

Dixie and Taylor Counties for Individual Assistance.

Jefferson, Leon, and Liberty Counties for Public Assistance.

Calhoun, Holmes, Monroe, and Washington Counties for Public Assistance [Categories C–G] (already designated for Public Assistance [Categories A and B], including direct Federal assistance. For a period of up to 72 hours, assistance for emergency protective measures, including direct Federal assistance, is provided at 100 percent of the total eligible costs. The period of up to 72 hours at 100 percent excludes debris removal.)

Bay, Escambia, Franklin, Gulf, Okaloosa, Santa Rosa, Wakulla, and Walton Counties for Public Assistance [Categories C–G] (already designated for Individual Assistance and Public Assistance [Categories A and B], including direct Federal assistance. For a period of up to 72 hours, assistance for emergency protective measures, including direct Federal assistance, is provided at 100 percent of the total eligible costs. The period of up to 72 hours at 100 percent excludes debris removal.)

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050 Individuals and Households Program—Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 05–15032 Filed 7–28–05; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1595–DR]

Florida; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Florida (FEMA–1595–DR), dated July 10, 2005, and related determinations.

EFFECTIVE DATE: July 22, 2005.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Florida is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 10, 2005:

Dixie County for Public Assistance (already designated for Individual Assistance.)

Levy County for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050 Individuals and Households Program—Other Needs, 97.036, Public

Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 05–15033 Filed 7–28–05; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1595–DR]

Florida; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Florida (FEMA–1595–DR), dated July 10, 2005, and related determinations.

EFFECTIVE DATE: July 20, 2005.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective July 20, 2005.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050 Individuals and Households Program-Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 05–15034 Filed 7–28–05; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1594–DR]

Mississippi; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Mississippi (FEMA–1594–DR), dated July 10, 2005, and related determinations.

EFFECTIVE DATE: July 15, 2005.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective July 15, 2005.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050 Individuals and Households Program-Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 05–15031 Filed 7–28–05; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[CIS No. 2356–05]

RIN 1615–ZA24

Extension of the Designation of Somalia for Temporary Protected Status

AGENCY: U.S. Citizenship and Immigration Services, DHS.

ACTION: Notice.

SUMMARY: The designation of Somalia for Temporary Protected Status (TPS) will expire on September 17, 2005. This Notice extends TPS for Somalia for 12 months, until September 17, 2006, and sets forth procedures necessary for nationals of Somalia (or aliens having no nationality who last habitually resided in Somalia) with TPS to re-register and to apply for an extension of their employment authorization documents (EADs) for the additional 12-month period. Re-registration is limited to persons who registered under the initial designation (which was announced on September 16, 1991) or the re-designation (which was announced on September 4, 2001), and also timely re-registered under each subsequent extension of the designation. Certain nationals of Somalia (or aliens having no nationality who last habitually resided in Somalia) who previously have not applied for TPS may be eligible to apply under the late initial registration provisions.

EFFECTIVE DATES: The extension of the designation of TPS for Somalia is effective September 17, 2005, and will remain in effect until September 17, 2006. The 60-day re-registration period begins July 29, 2005 and will remain in effect until September 27, 2005.

FOR FURTHER INFORMATION CONTACT: Colleen Cook, Residence and Status Services, Office of Programs and Regulations Development, U.S. Citizenship and Immigration Services, Department of Homeland Security, 111 Massachusetts Avenue, NW, 3rd Floor, Washington, DC 20529, telephone (202) 514–4754.

SUPPLEMENTARY INFORMATION:

Abbreviations and Terms Used in This Document

Act—Immigration and Nationality Act
ASC—USCIS Application Support Center
DHS—Department of Homeland Security
DOS—Department of State
EAD—Employment Authorization Document
RIC—Resource Information Center
TPS—Temporary Protected Status
USCIS—U.S. Citizenship and Immigration Services

What Authority Does the Secretary of Homeland Security Have To Extend the Designation of TPS for Somalia?

Under section 244 of the Immigration and Nationality Act (Act), 8 U.S.C. 1254a, the Secretary of Homeland Security, after consultation with appropriate agencies of the Government, is authorized to designate a foreign state

(or part thereof) for TPS. 8 U.S.C. 1254a(b)(1). The Secretary of Homeland Security may then grant TPS to eligible nationals of that foreign state (or aliens having no nationality who last habitually resided in that state). 8 U.S.C. 1254a(a)(1).

At least 60 days before the expiration of the TPS designation, or any extension thereof, section 244(b)(3)(A) of the Act requires the Secretary to review, after consultation with appropriate agencies of the Government, the conditions in a foreign state designated for TPS to determine whether the conditions for a TPS designation continue to be met and, if so, the length of an extension of the TPS designation. 8 U.S.C. 1254a(b)(3)(A). If the Secretary determines that the foreign state no longer meets the conditions for TPS designation, he shall terminate the designation, as provided in section 244(b)(3)(B) of the Act. 8 U.S.C. 1254a(b)(3)(B). Finally, if the Secretary does not determine that a foreign state (or part thereof) no longer meets the conditions for designation at least 60 days before the designation is due to end, section 244(b)(3)(C) of the Act provides for an automatic extension of TPS for an additional period of 6 months, or, in the Secretary's discretion, 12 or 18 months. 8 U.S.C. 1254a(b)(3)(C).

Why Did the Secretary of Homeland Security Decide To Extend the TPS Designation for Somalia?

On September 16, 1991, the Attorney General published a Notice in the **Federal Register** at 56 FR 46804 designating Somalia for TPS based on extraordinary and temporary conditions within the country. The Attorney General extended this TPS designation annually, determining in each instance that the conditions warranting such designation continued to be met. On September 4, 2001, the Attorney General extended and re-designated Somalia by publishing a Notice in the **Federal Register** at 66 FR 46288. Since that date, TPS for Somalia has been extended three times. See 67 FR 48950, 68 FR 43147, and 69 FR 47937. The most recent extension became effective on September 17, 2004, and is due to end on September 17, 2005.

Over the past year, DHS and DOS have continued to review conditions in Somalia. Based on this review, a 12-month extension is warranted because the extraordinary and temporary conditions that prompted designation persist. Further, USCIS has determined that it is not contrary to the national interest of the United States to permit aliens who are eligible for TPS based on the designation of Somalia to remain temporarily in the United States. 8 U.S.C. 1254a(b)(1)(C).

On May 5, 2005, DOS submitted a memorandum to USCIS recommending the extension of TPS for Somalia (DOS Recommendation). DOS noted that more than 10 years after the withdrawal of the United Nations' Operation in Somalia and 14 years since the fall of President Siad Barre, the country still lacks a central government. *Id.* A Transitional Federal Government (TFG), including a 275-member parliament, was formed in October 2004. *Id.* The December 31, 2004 deadline for the TFG to relocate from Nairobi, Kenya to Somalia has passed due to security concerns. *Id.* In March 2005, militias attacked demonstrators in favor of temporarily relocating the TFG to Baidoa rather than the capital, Mogadishu. *Id.* In May 2005, the USCIS Resource Information Center (RIC) reported that 15 people were killed and almost 40 wounded when a bomb exploded at a Mogadishu stadium where Somali Prime Minister Gedi was addressing a large crowd in early May (RIC Report). DOS also reports that the relocation of the TFG to Somalia potentially could exacerbate existing tensions and cause further conflict in Somalia. (DOS Recommendation). If the TFG is to establish a viable presence in Somalia, 55,000 militia members will need to be disarmed. (RIC Report).

The internal conflict has continued unabated and the overall human rights and humanitarian situation resulting from the lack of a central government remains largely unchanged. (RIC Report). In the last 15 years, two million people have been displaced from their homes and up to 500,000 have lost their lives. *Id.*

During the past year, fighting continued throughout Somalia, particularly in Mogadishu, Las Anod, Baidoa, and in the regions of Bari, Bay, Bakol, Gedo, Lower Shabelle, Middle Shebelle, and the Middle Juba. (DOS Recommendation). There were reports of clashes in April 2005 that resulted in 15,000 Somalis fleeing into Kenya. *Id.* Although Somaliland and Puntland are relatively more stable than the rest of the country, the territorial dispute between the two regions is ongoing. *Id.* DOS reports that the situation has stabilized slightly since the election of General Adde Muse as President of Puntland in January 2005. *Id.*

A four-year drought also has created a humanitarian emergency in the north and in parts of the south-central zone of Somalia. (RIC Report). Conditions have worsened in the drought-affected areas, evidenced by the high level of malnutrition in central Somalia where 19 to 22 percent of the population is malnourished. *Id.* Out of a total estimated population of 7 to 8 million, approximately 1.4 million people are in desperate need of assistance. *Id.* Delivery of humanitarian assistance is limited by the lack of road infrastructure and security concerns have rendered some affected areas inaccessible. *Id.* At the end of 2004, 350,000 Somalis were refugees and another 370,000 to 400,000 were internally displaced within Somalia. *Id.*

Based upon this review, the Secretary of Homeland Security, after consultation with appropriate Government agencies, finds that the conditions that prompted the designation of Somalia for TPS continue to be met. 8 U.S.C. 1254a(b)(3)(A). There are extraordinary and temporary conditions in Somalia that prevent aliens who are nationals of Somalia (or aliens having no nationality who last habitually resided in Somalia) from returning to Somalia in safety if these aliens meet the other statutory requirements for TPS. The Secretary also finds that permitting these aliens who meet the eligibility requirements of TPS to remain in the United States temporarily is not contrary to the national interest of the United States. 8 U.S.C. 1254a(b)(1)(C). On the basis of these findings, the Secretary of Homeland Security concludes that the designation of Somalia for TPS should be extended for an additional 12-month period. 8 U.S.C. 1254a(b)(3)(C).

If I Currently Have Benefits Through the TPS Designation of Somalia, Should I Re-register for TPS?

Yes. If you already have received benefits through the TPS designation of Somalia, your benefits will expire on September 17, 2005. Accordingly, individual TPS beneficiaries must comply with the re-registration requirements described below in order to maintain TPS benefits through September 17, 2006. TPS benefits include temporary protection against removal from the United States, as well as employment authorization, during the TPS designation period. 8 U.S.C. 1254a(a)(1).

If I Am Currently Registered for TPS, or Have a Pending Application for TPS, How Do I Re-register Under the Extension?

All persons previously granted TPS under the designation of Somalia who wish to maintain such status must re-register under the extension by filing the following: (1) Form I–821, Application for Temporary Protected Status, without fee; (2) Form I–765, Application for Employment Authorization (see the

chart below to determine whether you must submit the one hundred and seventy-five dollar ($175) filing fee with Form I–765) or a fee waiver request; and (3) a biometric service fee of seventy dollars ($70) if you are 14 or older, or if you are under 14 and requesting an EAD. The biometric service fee will not be waived. 8 CFR 103.2(e)(4)(i), (iii). Unlike previous registration periods, TPS applicants need not submit photographs with the TPS application because a photograph will be taken when the alien appears at an Application Support Center (ASC) for collection of biometrics. Aliens who have previously registered for TPS but whose applications remain pending should follow these instructions if they wish to renew their TPS benefits.

An application submitted without the required fees will be returned to the applicant. Please note that Form I–821 has been revised and only the new form with Revision Date 11/5/04 will be accepted. Submissions of older versions of Form I–821 will be rejected. Submit the completed forms and applicable fee, if any, to the USCIS Chicago, IL Lockbox, as noted below, during the 60-day re-registration period that begins July 29, 2005 and ends September 27, 2005. An interim Employment Authorization Document (EAD) will not be issued unless the Form I–765, as part of the TPS registration package, has been pending with USCIS more than 90 days after all requested initial evidence has been received, including collection of the applicant's fingerprints at an ASC. *See* 8 CFR 103.2(b)(10)(ii) and 8 CFR 274a.13(d).

Where Should an Applicant Submit His or Her Application To Re-Register or Late Initial Register for TPS?

The Form I–821, Form I–765, fees, and all supporting documentation should be filed at the USCIS Chicago Lockbox at: U.S. Citizenship and Immigration Services, Attn: TPS Somalia, PO Box 87583, Chicago, IL 60680–0583,

Or, for non-United States Postal Service (USPS) deliveries: U.S. Citizenship and Immigration Services, Attn: TPS Somalia, 427 S. LaSalle—3rd Floor, Chicago, IL 60605.

Please note that these addresses are not the same as where you have submitted your forms during previous re-registration periods. Aliens re-registering or late initial registering for TPS under the designation of Somalia should not send their TPS forms and fees directly to a USCIS district office. Failure to follow these instructions will delay processing of your TPS re-registration application and may result in your application being returned to you.

Where Can I Obtain a Copy of the New Form I–821 Dated 11/5/04?

TPS forms are available from the toll-free USCIS Forms line, 1–800–870–3676, from your local USCIS district office, or from the USCIS Web site: *http://www.uscis.gov*.

Who Must Submit the $175 Filing Fee for the Form I–765?

Although all re-registrants must submit the Form I–765, only those re-registrants requesting an EAD, regardless of age, must submit the $175 filing fee or a properly documented fee waiver request pursuant to 8 CFR 244.20. Persons between the ages of 14 and 65 (inclusive) filing under the late initial registration provisions who are requesting an EAD also must submit the $175 fee or a fee waiver request pursuant to 8 CFR 244.20. Aliens who are submitting Form I–765 only for data-gathering purposes (as explained in the chart below) are not required to submit a $175 filing fee, nor are they required to submit a fee waiver request. Note that TPS re-registrants and applicants for late initial registration may wish to consider whether obtaining an EAD will be helpful to them for reasons other than verifying employment eligibility (for example, as a photo identity document and/or evidence of lawful presence in the United States in order to demonstrate eligibility for a driver's license in some states).

If . . .	Then . . .
You are re-registering for or renewing a TPS-related EAD, regardless of your age	You must complete and file the Form I–765, Application for Employment Authorization, with the $175 fee or a fee waiver request in accordance with 8 CFR 244.20.
You are not requesting an EAD	You must complete and file Form I–765 (for data-gathering purposes only) with no fee or fee waiver request.[1]
You are filing under the late initial registration provisions, are requesting an EAD, and are between the ages of 14 and 65 (inclusive).	You must complete and file Form I–765 with the $175 fee or a fee waiver request.
You are applying for a TPS-related EAD under the late initial registration provisions and are under age 14 or over age 65	You must complete and file Form I–765 (for data-gathering purposes only) with no fee.

[1] An applicant who does not want an EAD does not need to submit the $175 fee, but must complete and submit Form I–765 for data-gathering purposes.

Who Must Submit the $70 Biometric Service Fee?

All aliens 14 years of age and older who are re-registering for TPS, renewing temporary treatment benefits, or late initial registering must submit the $70 biometric service fee. In addition, any applicant under the age of 14 choosing to apply for an EAD must submit the $70 biometric service fee, as a photograph, signature, and fingerprint are required to produce the EAD. The biometric service fee will not be waived. 8 CFR 103.2(e)(4)(i), (iii).

Does TPS Lead to Lawful Permanent Residence?

No. TPS is a temporary benefit that does not lead to lawful permanent residence by itself or confer any other immigration status. 8 U.S.C. 1254a(e), (f)(1), and (h). When a country's TPS designation is terminated, TPS beneficiaries will have the same immigration status they held prior to TPS (unless that status has since expired or been terminated), or any other status they may have acquired while registered for TPS. Accordingly, if an alien held no lawful immigration status prior to being granted TPS and did not obtain any other status during the TPS period, he or she will have no lawful status upon the termination of the TPS designation. Once the Secretary determines that a TPS designation should be terminated, aliens who had TPS under that designation are expected to plan for their departure from the United States and may wish to apply for immigration benefits for which they may be eligible.

May I Apply for Another Immigration Benefit While Registered for TPS?

Yes. Registration for TPS does not prevent you from applying for another non-immigrant status, from filing for adjustment of status based on an immigrant petition, or from applying for any other immigration benefit or protection. 8 U.S.C. 1254a(a)(5). For the purposes of change of nonimmigrant status and adjustment of status, an alien is considered as being in, and maintaining, lawful status as a nonimmigrant during the period in which the alien is granted TPS. 8 U.S.C. 1254a(f)(4).

How Does an Application for TPS Affect My Application for Asylum or Other Immigration Benefits?

An application for TPS does not affect an application for asylum or any other immigration benefit. Denial of an application for asylum or any other immigration benefit does not affect an applicant's TPS eligibility, although the grounds for denying one form of relief may also be grounds for denying TPS. For example, a person who has been convicted of a particularly serious crime is not eligible for asylum or TPS. 8 U.S.C. 1158(b)(2)(A)(ii); 8 U.S.C. 1254a(c)(2)(B)(ii).

Does This Extension Allow Nationals of Somalia (or Aliens Having No Nationality Who Last Habitually Resided in Somalia) Who Entered the United States After September 4, 2001, To Apply for TPS?

No. This is a Notice of an extension of the TPS designation of Somalia, not a Notice re-designating Somalia for TPS. An extension of a TPS designation does not change the required dates of continuous residence and continuous physical presence in the United States. This extension does not expand TPS availability to those beyond the current TPS eligibility requirements for Somalia. To be eligible for benefits under this extension, nationals of Somalia (or aliens having no nationality who last habitually resided in Somalia) must have been continuously physically present and continuously resided in the United States since September 4, 2001.

Are Certain Aliens Ineligible for TPS?

Yes. There are certain criminal and terrorism-related inadmissibility grounds that render an alien ineligible for TPS. 8 U.S.C. 1254a(c)(2)(A)(iii). Further, aliens who have been convicted of any felony, or two or more misdemeanors, committed in the United States are ineligible for TPS under section 244(c)(2)(B) of the Act, 8 U.S.C. 1254a(c)(2)(B), as are aliens described in the bars to asylum in section 208(b)(2)(A) of the Act, 8 U.S.C. 1158(b)(2)(A).

What Is Late Initial Registration?

Some aliens who did not file for TPS during the initial registration period may be eligible for late initial registration under 8 U.S.C. 1254a(c)(1)(A) and (c)(2) and 8 CFR 244.2(f)(2) and (g). To apply for late initial registration an applicant must:

(1) Be a national of Somalia (or alien who has no nationality and who last habitually resided in Somalia);

(2) Have continuously resided in the United States since September 4, 2001;

(3) Have been continuously physically present in the United States since September 4, 2001; and

(4) Be admissible as an immigrant, except as provided under section 244(c)(2)(A) of the Act, and not ineligible under section 244(c)(2)(B) of the Act.

Additionally, the applicant must be able to demonstrate that during the registration period for the initial designation (from September 16, 1991 to September 16, 1992), or during the registration period for the re-designation (from September 4, 2001 to September 17, 2002), he or she:

(1) Was a nonimmigrant or had been granted voluntary departure or any relief from removal;

(2) Had an application for change of status, adjustment of status, asylum, voluntary departure, or any relief from removal or change of status pending or subject to further review or appeal;

(3) Was a parolee or had a pending request for reparole; or

(4) Is the spouse or child of an alien currently eligible to be a TPS registrant.

An applicant for late initial registration must file an application for late registration within 60 days of the expiration or termination of the above-described conditions. 8 CFR 244.2(g). All late initial registration applications for TPS pursuant to the TPS extension of Somalia should be submitted to the USCIS lockbox address listed above.

What Happens When This Extension of TPS Expires on September 17, 2006?

At least 60 days before this extension of TPS designation for Somalia expires on September 17, 2006, the Secretary of Homeland Security, after consultation with appropriate agencies of the Government, will review conditions in Somalia and determine whether the conditions for TPS designation continue to be met at that time, or whether the TPS designation should be terminated. 8 U.S.C. 1254a(b)(3). Notice of that determination, including the basis for the determination, will be published in the **Federal Register**.

Notice of Extension of Designation of TPS for Somalia

By the authority vested in the Secretary of Homeland Security under sections 244(b)(3)(A) and (b)(3)(C) of the Act, DHS has determined, after consultation with the appropriate Government agencies, that the conditions that prompted designation of Somalia for TPS continue to be met. Accordingly, DHS orders as follows:

(1) The designation of Somalia under section 244(b)(1)(C) of the Act is extended for an additional 12-month period from September 17, 2005, to September 17, 2006. 8 U.S.C. 1254a(b)(3)(C).

(2) There are approximately 324 nationals of Somalia (or aliens having no nationality who last habitually resided in Somalia) who have been granted TPS and who are eligible for re-registration.

(3) To maintain TPS, a national of Somalia (or an alien having no nationality who last habitually resided in Somalia) who was granted TPS during the initial designation period (or through late initial registration) and who re-registered during the subsequent extensions of this designation, must re-register for TPS during the 60-day re-registration period from July 29, 2005 until September 27, 2005.

(4) To re-register, the alien must file the following: (1) Form I–821, Application for Temporary Protected Status, without fee; (2) Form I–765, Application for Employment Authorization; and (3) a biometric services fee of $70 if the alien is age 14 or older, or if the alien is under age 14 and requesting an employment authorization document. Applications submitted without the required fees will be returned to the applicant. If the alien requests an EAD, he or she must submit $175 or a properly documented fee waiver request, pursuant to 8 CFR 244.20, with the Form I–765. An alien who does not request employment authorization must still file Form I–765 along with Form I–821, but he or she is not required to submit the fee or a fee waiver request for filing Form I–765. Failure to re-register without good cause will result in the withdrawal of TPS. 8 U.S.C. 1254a(c)(3)(C). Aliens who have previously registered for TPS but whose applications remain pending should follow these instructions to renew temporary treatment benefits. Some persons who had not previously applied for TPS may be eligible for late initial registration under 8 CFR 244.2.

(5) At least 60 days before this extension ends on September 17, 2006, the Secretary of Homeland Security, after consultation with appropriate agencies of the Government, will review the designation of Somalia for TPS and determine whether the conditions for designation continue to be met. 8 U.S.C. 1254a(b)(3)(A). Notice of that determination, including the basis for the determination, will be published in the **Federal Register**. Id.

(6) Information concerning the extension of designation of Somalia for TPS will be available at local USCIS offices upon publication of this Notice and on the USCIS Web site at *http://www.uscis.gov*.

Dated: July 15, 2005.

Michael Chertoff,

Secretary.

[FR Doc. 05–15001 Filed 7–26–05; 10:25 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4980–N–30]

Federal Property Suitable as Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

DATES: July 29, 2005.

FOR FURTHER INFORMATION CONTACT: Kathy Ezzell, Department of Housing and Urban Development, Room 7262, 451 Seventh Street, SW., Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: July 21, 2005.

Mark R. Johnston,

Director, Office of Special Needs Assistance Programs.

[FR Doc. 05–14742 Filed 7–28–05; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Privacy Act of 1974, As Amended; Addition of a New System of Records

AGENCY: Office of the Secretary, U.S. Department of the Interior.

ACTION: Proposed addition of a new system of records.

SUMMARY: The Office of the Secretary, Department of the Interior is issuing public notice of its intent to add a new Privacy Act system of records to its inventory of records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a). This action is necessary to meet the requirements of the Privacy Act to publish in the **Federal Register** notice of the existence and character of records systems maintained by the agency (5 U.S.C. 552a(e)(4)). The new system of records is called the Box Index Search System (BISS)—Interior, OS–3.

EFFECTIVE DATE: 5 U.S.C. 552a (e) (11) requires that the public be provided a 30-day period in which to comment on the agency's intended use of the information in the system of records. The Office of Management and Budget, in its Circular A–130, requires an additional 10-day period (for a total of 40 days) in which to make these comments. Any persons interested in commenting on this proposed amendment may do so by submitting comments in writing to the Department of the Interior, Office of the Secretary Privacy Act Officer, Sue Ellen Sloca, U.S. Department of the Interior, Mail Stop (MS)–1413, Main Interior Building (MIB), 1849 C Street, NW., Washington, DC 20240. Comments received within 40 days of publication in the **Federal Register** will be considered. The system will be effective as proposed at the end of the comment period unless comments are received which would require a contrary determination. The Department will publish a revised notice if changes are made based upon a review of comments received.

FOR FURTHER INFORMATION CONTACT: For information on the BISS—Interior, OS–3, please contact Ethel Abeita, Director, Office of Trust Records, 4400 Masthead NE, Albuquerque, NM, 87109, (505) 816–1600.

SUPPLEMENTARY INFORMATION: The purpose of the Box Index Search System (BISS) is to create a file-level listing of the contents of boxes of inactive records as a quick finding aid when records are retired, and to provide authorized parties with a tool to search all inactive records at the file-level that are stored at the American Indian Records Repository (AIRR) in Lenexa, KS. The BISS will provide an enhanced research capability over the existing paper Standard Form 135s, and other multiple partial inventory databases that currently exist. This improvement will enable DOI to centrally manage access to records and allow BIA and OST staff direct access to information about records that have been retired.

Dated: July 25, 2005.

Robert McKenna,

Chief Information Officer, Office of the Special Trustee for American Indians.

INTERIOR/OS–3

SYSTEM NAME:

Box Index Search System (BISS)—Interior, OS–3.

SYSTEM LOCATION:

This system is located in the Office of the Chief Information Officer, Office of the Special Trustee for American Indians (OST), 4400 Masthead NE, Albuquerque, NM. Information contained in the system will be made available electronically to OST offices in Albuquerque, NM; at the American Indian Records Repository (AIRR) in Lenexa, KS; and at OST and Bureau of Indian Affairs (BIA) field offices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals whose names and other identifying information appear in file folders from inactive BIA and OST records being retired to the American Indian Records Repository. Future information may include individual Indian-related financial records from other Departmental bureaus or offices.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system consists of (1) Indices bearing the names of the individuals and/or any other identifiers that were included on the file folder label created by the originating office; (2) the type of records in the folder: (3) where the records originated; (4) date ranges of the information; (5) records management information; and (6) miscellaneous information associated with the storage box. It is noted that this system does not maintain the contents of the administrative or program file folder. Its purpose is to identify folders in boxes and provide brief summaries of the

document types in file folders for financial records only.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

This system of records is maintained under the authority 44 U.S.C. 3101; 44 U.S.C. 3102; and 5 U.S.C. 301.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

The system's main purposes are to: (1) Create a file level listing of the contents of boxes containing inactive records as a quick finding aid, complementing the Standard Form 135 Records Transmittal and Receipt created when records are retired; and (2) provide authorized parties with a tool to search a file level index of all inactive records stored at the American Indian Records Repository (AIRR) in Lenexa, KS.

DISCLOSURES OUTSIDE THE DOI MAY BE MADE TO:

(1) Indian Tribal account holders or their heirs, if deceased; (2) contractors who service and maintain the system for the Department; (3) an expert, consultant, or contractor (including employees of the contractor) of DOI that performs, on DOI's behalf, research and other services requiring access to these records in order to fulfill the purposes for which the underlying documents were created; (4) parties authorized to perform searches to locate official files in order to fulfill the purposes for which the underlying files were created ; (5)(a) any of the following entities or individuals, when the circumstances set forth in (b) are met:

(i) The Department of Justice (DOJ);

(ii) A court, adjudicative or other administrative body;

(iii) A party in litigation before a court or adjudicative or administrative body; or

(iv) Any DOI employee acting in his or her individual capacity if DOI or DOJ has agreed to represent that employee or pay for private representation of the employee;

(b) When

(i) One of the following is a party to the proceeding or has an interest in the proceeding:

(A) DOI or any component of DOI;

(B) Any DOI employee acting in his or her official capacity;

(C) Any DOI employee acting in his or her individual capacity if DOI or DOJ has agreed to represent that employee or pay for private representation of the employee;

(D) The United States, when DOJ determines that DOI is likely to be affected by the proceeding; and

(ii) DOI deems the disclosure to be:

(A) Relevant and necessary to the proceeding; and

(B) Compatible with the purposes for which the records were compiled.

(6) To a congressional office in response to a written inquiry of an individual covered by the system, or the heir of such individual if the covered individual is deceased, has made to the congressional office about the individual.

(7) To the appropriate Federal agency that is responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation or order, when we become aware of an indication of a violation or potential violation of the statute, rule, regulation or order.

(8) To an official of another Federal agency to provide information needed in the performance of official duties related to reconciling or reconstructing data files, in support of the functions for which the records were collected and maintained.

(9) To representatives of the National Archives and Records Administration to conduct records management inspections under the authority of 44 U.S.C. 2903 and 2904.

(10) To state and local governments and tribal organizations to provide information needed in response to court order, and/or discovery purposes related to litigation.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Pursuant to 5 U.S.C. 552a(b)12, records can be disclosed to consumer reporting agencies as they are defined in the Fair Credit Reporting Act.

STORAGE:

Records are stored in electronic media on hard disks, magnetic tapes and compact disks and paper media.

RETRIEVABILITY:

Information stored in BISS is full text indexed and can be searched by any significant textual item (words and/or numbers) or combination of textual items as well as by any field in the database.

ACCESS SAFEGUARDS:

Maintained in accordance with the Department of the Interior Privacy Act regulations for safeguarding of information (43 CFR 2.51). A Privacy Impact Assessment was completed. Management controls and Rules of Behavior were developed to ensure security controls.

RETENTION AND DISPOSAL:

Records relating to persons covered by this system are retained in accordance with the 16BIAM and other respective bureau/office records retention schedules. The system is scheduled for permanent retention.

SYSTEM MANAGER(S) AND ADDRESS:

Office of Trust Records, Department of the Interior, 4400 Masthead NE., Albuquerque, NM 87109.

NOTIFICATION PROCEDURES:

An individual requesting notification of the existence of records on him or herself in the BISS should address his/her request to the System Manager above. The request must be in writing and signed by the requester and include his or her mailing address and social security number (See 43 CFR 2.60). Note, this system does not maintain the contents of the administrative or program file folder that is being transferred to the records center, and serves solely as a locator tool.

RECORDS ACCESS PROCEDURES:

See procedures above and 43 CFR 2.63.

CONTESTING RECORD PROCEDURES:

See procedures above and 43 CFR 2.71.

RECORD SOURCE CATEGORIES:

Information in this system is obtained from BIA and OST administrative and program records. Future record holdings in AIRR may include Indian-related financial records from other Departmental bureaus or offices.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 05–14949 Filed 7–28–05; 8:45 am]

BILLING CODE 4310–RK–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Information Collection Renewal to Be Sent to the Office of Management and Budget (OMB) for Approval Under the Paperwork Reduction Act; 1018–0113; Grants Program Authorized by the Neotropical Migratory Bird Conservation Act (NMBCA)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: We (Fish and Wildlife Service, Service) plan to send a request to OMB to renew approval for the collection of information described below under the provisions of the Paperwork Reduction Act of 1995. We use the information collected to conduct our NMBCA grants program in the manner prescribed by that Act. We also use the information to comply with Federal reporting requirements for grants awarded under the program.

DATES: You must submit comments on or before September 27, 2005.

ADDRESSES: Send your comments on the information collection to Hope Grey, Information Collection Clearance Officer, Fish and Wildlife Service, MS 222–ARLSQ, 4401 N. Fairfax Drive, Arlington, VA 22203 (mail); *hope_grey@fws.gov* (e-mail); or (703) 358–2269 (fax).

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection requirements or explanatory information, contact Hope Grey, Information Collection Clearance Officer, at the above addresses or by telephone at (703) 358–2482.

SUPPLEMENTARY INFORMATION: The OMB regulations at 5 CFR part 1320, which implement provisions of the Paperwork Reduction Act of 1995 (44 U.S.C 3501 *et seq.*), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (*see* 5 CFR 1320.8(d)). We will ask OMB to renew approval of the collection of information for the NMBCA grants program. The current OMB control number for this collection of information is 1018–0113, which expires on November 30, 2005. We will request a 3-year term of approval for this information collection activity. Federal agencies may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The purposes of NMBCA are (1) to perpetuate healthy populations of neotropical migratory birds; (2) to assist in the conservation of neotropical migratory birds by supporting conservation initiatives in the United States, Latin America, and the Caribbean; and (3) to provide financial resources and to foster international cooperation for those initiatives. Principal conservation actions supported by NMBCA are protection and management of neotropical migratory bird populations; maintenance, management, protection, and restoration of neotropical migratory bird habitat; research and monitoring; law enforcement; and community outreach and education.

Competing for grant funds involves applications from partnerships that describe in substantial detail project locations, project resources, future benefits, and other characteristics, to meet the standards established by the Fish and Wildlife Service and the requirements of NMBCA. The information collection for this program is part of a system of records covered by the Privacy Act (5 U.S.C. 552(a)).

Materials that describe the program and assist applicants in formulating project proposals are available on our Web site at *http://birdhabitat.fws.gov*. Persons who do not have access to the Web site may obtain instructional materials by mail. There has been little change in the scope and general nature of these instructions since OMB first approved the information collection in 2002. Instructions assist applicants in formulating detailed project proposals for consideration by a panel of reviewers from the Fish and Wildlife Service. These instructional materials are the basis for this information collection request. Notices of funding availability are posted annually on the Grants.gov Web site (*http://www.grants.gov*) as well as in the Catalog of Federal Domestic Assistance. We use information collected under this program to respond to such needs as audits, program planning and management, program evaluation, Government Performance and Results Act reporting, Standard Form 424 (Application For Federal Assistance), assistance awards, budget reports and justifications, public and private requests for information, data provided to other programs for databases on similar programs, congressional inquiries, and reports required by NMBCA.

If the information were not collected, we would have to eliminate the program because it would not be possible to determine eligibility and the relative worth of the proposed projects. Reducing the frequency of collection would only reduce the frequency of grant opportunities as the information collected is unique to each project proposal. Discontinuation of the program is not a viable option.

Title: Grants Programs Authorized by the Neotropical Migratory Bird Conservation Act.

OMB Control Number: 1018–0113.

Form Number(s): None.

Frequency of Collection: Occasional. This grants program has one project proposal submission per year. Annual reports are due 90 days after the anniversary date of the grant agreement. Final reports are due 90 days after the end of the project period. The project period is up to 2 years.

Description of Respondents: (1) An individual, corporation, partnership, trust, association, or other private entity; (2) an officer, employee, agent, department, or instrumentality of the Federal Government, of any State, municipality, or political subdivision of a State, or of any foreign government: (3) a State, municipality, or political subdivision of a State; (4) any other entity subject to the jurisdiction of the United States or of any foreign country; and (5) an international organization.

Total Annual Burden Hours: 4,000. We estimate 100 hours for each grant proposal.

Number of Respondents: Approximately 40 from the United States. We anticipate funding approximately one quarter of the projects submitted.

We queried five recipients of NMBCA grants with regard to three aspects of the grants programs: (1) The availability of the information requested, (2) the clarity of the instructions, and (3) the annual burden hours for preparing applications and other materials, such as annual and final reports. All respondents advised that the application instructions are readily available for organizations in the United States. One respondent indicated that some smaller organizations in Latin America and the Caribbean might have difficulty finding the information. Similarly, respondents found the clarity of the information/instructions to be good, while some smaller organizations outside the United States might require assistance. One respondent indicated that the Grant Administration Guidelines, provided to successful grant recipients, are complex and sometimes difficult to interpret.

Respondents report that, on average, proposal preparation requires about 70 hours and report preparation averaged about 30 hours, yielding an average annual burden of about 100 hours for a successful recipient of grant funds. We therefore consider our original estimate of 40 hours for proposal preparation only to be low. Pending further refinement from responses to this notice, we may further revise our estimate of the total annual burden hours.

We invite your comments on: (1) Whether or not the collection of information is necessary for the proper performance of the NMBCA grants programs, including whether or not in the opinion of the respondent the information has practical utility; (2) the accuracy of our estimate of the annual hour burden of information requested; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents.

Dated: June 30, 2005.

Hope Grey,

Information Collection Clearance Officer, Fish and Wildlife Service.

[FR Doc. 05–15021 Filed 7–28–05; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Notice of Availability of the Draft Resource Management Plan and Environmental Impact Statement for the Ely Field Office, Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: In accordance with the National Environmental Policy Act of 1969 (NEPA) and under the authority of the Federal Land Policy and Management Act of 1976 (FLPMA), a Draft Resource Management Plan and Environmental Impact Statement (DRMP/EIS) has been prepared for public lands and resources administered by the Bureau of Land Management's Ely Field Office.

DATES: The comment period will end 120 days after the Environmental Protection Agency's Notice of Availability is published in the **Federal Register** announcing the availability of this DRMP/EIS. Comments on the DRMP/EIS must be received on or before the end of the comment period at the address listed below. Public meetings will be held during the comment period. Public meetings will be held in Nevada in the cities of Ely, Caliente, Mesquite, Las Vegas, Reno, and Tonopah. Any other public involvement activities will be announced at least 15 days in advance through public notices, media news releases, newsletter mailings, and on the Ely RMP Web site at *http://elyrmp.ensr.com.*

ADDRESSES: Written comments should be sent to Ely RMP Team, BLM Ely Field Office, HC 33, Box 33500, Ely, Nevada 89301. Comments may also be sent by e-mail to *elyrmp@blm.gov.* Documents pertinent to the DRMP/EIS and written comments, including names and street addresses of respondents, will be available for public review at the Ely Field Office at the address above during regular business hours, 7:30 a.m. to 4:30 p.m., Monday through Friday, except holidays. Responses to the comments will be published as part of the Proposed Resource Management Plan/Final Environmental Impact Statement.

FOR FURTHER INFORMATION CONTACT: For further information and/or to have your name added to the mailing list contact Gene Drais, RMP Project Manager, at (775) 289–1880 or correspond by e-mail to *elyrmp@blm.gov.*

SUPPLEMENTARY INFORMATION: The Ely RMP planning area is located in eastern Nevada in Lincoln, Nye, and White Pine Counties. The planning area addressed in the RMP contains 11,400,000 acres of public lands administered by the BLM Ely Field Office and the Caliente Field Station. The DRMP/EIS focuses on the principles of multiple use and sustained yield as prescribed by Section 202 of the FLPMA. The following participated in development of the RMP as cooperating agencies with special expertise: Duckwater Shoshone Tribe; Ely Shoshone Tribe; Great Basin National Park; Humboldt-Toiyabe National Forest; Lincoln County; Moapa Band of Paiutes; Nellis Air Force Base; Nevada Division of Minerals; Nevada Department of Transportation; Nevada Department of Wildlife; Nye County; Nevada State Historic Preservation Office; White Pine County; and Yomba Shoshone Tribe.

The public is invited to review and comment on the range and adequacy of the draft alternatives and associated environmental effects. For comments to be most helpful, they should relate to specific concerns or conflicts that are within the legal responsibilities of the BLM and can be resolved in this planning process. The DRMP/EIS provides direction and guidance for the management of approximately 11,400,000 acres of public land located in Lincoln, Nye, and White Pine Counties in eastern Nevada. The DRMP/EIS will replace the Schell and Caliente Management Framework Plans approved in 1983 and 1981, respectively, and the Egan Resource Management Plan approved in 1987.

The public involvement and collaboration process implemented for this effort included six open houses during scoping; presentations to interested organizations upon their invitation; presentations to and suggestions from the Mojave Southern Great Basin and the Northeastern Great Basin Resource Advisory Councils (RACs); and distribution of information via the Ely RMP website and periodic newsletters. A copy of the DRMP/EIS has been sent to individuals, agencies, and groups who requested a copy, or as required by regulation or policy.

The DRMP/EIS considers and analyzes five (5) alternatives, including the No Action Alternative (Continuation of Existing Management), alternatives that emphasize restoration of ecological systems, commodity production, and exclusion of permitted discretionary uses, and the BLM's Preferred Alternative. These alternatives were developed based on public input including scoping (February through July 2003), numerous meetings with local, State, tribal, and Federal agencies (Cooperating Agencies), and informal meetings with interested organizations upon their request. The alternatives provide for an array of alternative land use allocations and variable levels of commodity production and resource protection and restoration. After comments are reviewed and any pertinent adjustments are made, a Proposed RMP and Final Environmental Impact Statement are expected to be available in the summer of 2006.

The issues addressed in the formulation of alternatives include maintenance and restoration of resiliency to disturbed vegetation within the Great Basin, protection and management of habitats for special status species, upland and riparian habitat management, noxious and invasive plants, commercial uses (including livestock grazing, special recreation permits, mineral development, oil and gas leasing, rights-of-way and communication use areas), Areas of Critical Environmental Concern (ACECs), travel management, land disposal, and wild horses.

The preferred alternative considers 3 existing ACECs totaling 212,500 acres and 18 proposed new ACECs totaling 135,400 acres and ranging in size from 40 acres to 26,200 acres. The following types of resource use limitations would apply to restrictions on locations of rights-of-way, off-highway vehicle use, mineral exploration or development, disposal of lands and livestock use. For detailed information, see Chapter 2.5.22 of the Draft RMP/EIS.

If you wish to withhold your name or street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations and businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be available for public inspection in their entirety.

Review copies of the DRMP/EIS are available at the following locations in and near the planning area:

BLM Caliente Field Station
BLM Elko Field Office

BLM Ely Field Office
BLM Las Vegas Field Office
Ely Ranger District, Ely, Nevada
Great Basin National Park
Lincoln County Courthouse
Lincoln County Public Library
Nye County Courthouse
Nye County Public Library
White Pine County Courthouse
White Pine County Public Library

The DRMP/EIS and other associated documents may also be viewed and downloaded in PDF format at the Ely RMP Web site at *http://elyrmp.ensr.com.*

Gene A. Kolkman,

Ely Field Office Manager, Nevada.

[FR Doc. 05–14939 Filed 7–28–05; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[A–180–1430–EU: CACA 46353]

Non-Competitive Sale of Public Lands, Tuolumne County, California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: The Bureau of Land Management (BLM) proposes a direct (non-competitive) sale of approximately 1.59 acres of public land in Tuolumne County, California pursuant to Sections 203 and 209 of the Federal Land Policy and Management Act of October 21, 1976 (90 Stat. 2750–51; 43 U.S.C. 1713, and 90 Stat. 2757–58, 43 U.S.C. 1719), and the Federal Land Transaction Facilitation Act of July 25, 2000 (Pub. L., 106–248), at not less than appraised market value. The approved appraised market value has been determined to be $15,000.00 for approximately 1.59 acres. The following described public land has been determined to be suitable for direct (non-competitive) sale to Frank and Ana M. Rocha pursuant to Section 203 of the Federal Land Policy and Management Act of 1976 (FLPMA). This sale will resolve an inadvertent trespass by Frank Rocha.

Mount Diablo Meridian

T. 1 N., R. 14 E.,
Section 27, Lot 7
Containing 1.59 acres.

DATES: For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments pertaining to this action. The lands will not be offered for sale until at least 60 days after the date of publications of this notice in the **Federal Register**.

ADDRESSES: Send written comments concerning the proposed sale to the Bureau of Land Management, 63 Natoma Street, Folsom, California 95630.

FOR FURTHER INFORMATION CONTACT: Additional information pertaining to the land sale, including relevant planning and environmental documentation, may be obtained from the Folsom Field Office at the above address. Jodi Lawson (916) 985–4474, is the BLM contact for this proposed sale.

SUPPLEMENTARY INFORMATION: The public land described in this notice has been determined to be suitable for direct (non-competitive) sale pursuant to Section 203 of the Federal Land Policy and Management Act of 1976 (FLPMA). The potential buyer of the parcel will make application under section 209 of FLPMA, to purchase the mineral estate along with the surface estate. BLM is disposing of this parcel because it is difficult and uneconomic to manage as part of the public lands of the United States. BLM is also proposing the sale to resolve an inadvertent trespass. This proposed sale is consistent with the Folsom Field Office Sierra Planning Area Management Framework Plan (July 1988), and the public interest will be served by offering the parcel for sale. The money from this sale will be used to purchase lands for the BLM, National Park Service, Forest Service, or Fish and Wildlife Service. Any available mineral interests would be conveyed simultaneously with the sale of the land. The mineral interests being offered for conveyance have no known mineral value. Acceptance of a direct sale offer will constitute an application for conveyance of those mineral interests. The applicant will be required to pay a $50.00 non-returnable filing fee for conveyance of the available mineral interests.

The patent, when issued, will reserve a right-of-way thereon to Pacific Gas and Electric Power Company for a power transmission line constructed by the authority of the United States, Act of October 21, 19766 (43 U.S.C. 1701).

The State Director, who may sustain, vacate, or modify this realty action, will review objections to the sale. If there are no objections, this proposal will become the final determination of the Department of the Interior. Publication of this notice in the **Federal Register** will segregate the public lands from appropriations under the public land laws, including the mining laws, pending disposition of this action, or 270 days from the date of publication of this notice, whichever occurs first. Pursuant to the application to convey the mineral estate, the mineral interests of the United States are segregated by this notice from appropriation under the public land laws, including the mining laws for a period of two years from July 29, 2005.

Dated: May 4, 2005.

D.K. Swickard,

Folsom Field Manager.

[FR Doc. 05–15042 Filed 7–28–05; 8:45 am]

BILLING CODE 4310–AG–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–1092 and 1093 (Preliminary)]

Diamond Sawblades and Parts Thereof From China and Korea

Determination

On the basis of the record [1] developed in the subject investigations, 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 [2] or threatened with material injury[3] by reason of imports from China and Korea of diamond sawblades and parts thereof, provided for in subheading 8202.39.00 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).

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigations. 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 investigations under section 733(b) of the Act, or, if the preliminary

[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] Chairman Stephen Koplan, Commissioner Jennifer A. Hillman, and Commissioner Charlotte R. Lane determine that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of diamond sawblades and parts thereof from China and Korea.

[3] Vice Chairman Deanna Tanner Okun, Commissioner Marcia E. Miller, and Commissioner Daniel R. Pearson determine that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of imports of diamond sawblades and parts thereof from China and Korea.

determination is negative, upon notice of an affirmative final determination in those investigations under section 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigations need not enter a separate appearance for the final phase of the investigations. 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 investigations.

Background

On May 3, 2005, a petition was filed with the Commission and Commerce by the Diamond Sawblade Manufacturers' Coalition and its individual members: Blackhawk Diamond, Inc., Fullerton, CA; Diamond B, Inc., Santa Fe Springs, CA; Diamond Products, Elyria, OH; Dixie Diamond, Lilburn, GA; Hoffman Diamond, Punxsutawney, PA; Hyde Manufacturing, Southbridge, MA; Sanders Saws, Honey Brook, PA; Terra Diamond, Salt Lake City, UT; and Western Saw, Inc., Oxnard, CA, alleging that an industry in the United States is materially injured and threatened with material injury by reason of LTFV imports of diamond sawblades and parts thereof from China and Korea. Accordingly, effective May 3, 2005, the Commission instituted antidumping duty investigation Nos. 731–TA–1092–1093 (Preliminary).

Notice of the institution of the Commission's investigations 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 May 10, 2005 (70 FR 24612) and May 26, 2005 (70 FR 30480). The conference was held in Washington, DC, on June 15, 2005, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in these investigations to the Secretary of Commerce on July 18, 2005. The views of the Commission are contained in USITC Publication 3791 (August 2005), entitled *Diamond Sawblades and Parts Thereof from China and Korea: Investigation Nos. 731–TA–1092 and 1093 (Preliminary).*

Issued: July 25, 2005.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 05–15023 Filed 7–28–05; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

[AAG/A Order No. 004–2005]

Privacy Act of 1974; System of Records

Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a), the Department of Justice, Civil Rights Division (CRT), proposes to modify the following system of records previously modified and published in full text in the **Federal Register** on August 11, 2003 (68 Fed. Reg. 47611): Central Civil Rights Division Index File and Associated Records, JUSTICE/CRT–001.

CRT is adding one new routine use to this system of records. The records in this system of records are maintained by the Civil Rights Division in order to carry out its responsibilities to investigate and enforce federal statutes affecting civil rights. This routine use allows the disclosure of information explaining the Department's decision to close a criminal matter to the local community or public when the incident investigated has become a matter of public knowledge, the investigation is closed, and the Assistant Attorney General, Civil Rights Division, personally determines that, because there is a reasonable potential for civil unrest or a severe loss of confidence by the public in the investigative process, the disclosure of such information is appropriate. The release of information in the new routine use is compatible with the purpose of this system as use of the information is necessary and proper to carry out legitimate government purposes.

In accordance with 5 U.S.C. 552a(e)(4) and (11), the public is given a 30-day period in which to comment on the proposed new routine use disclosure. The Office of Management and Budget (OMB), which has oversight responsibility of the Act, requires a 40-day period in which to conclude its review of the system. Therefore, please submit any comments by August 29, 2005. The public, OMB and the Congress are invited to submit comments to: Mary Cahill, Management and Planning Staff, Justice Management Division, Department of Justice, Room 1400 National Place Building, NW., Washington, DC 20530. If no comments are received, the proposal will be implemented without further notice in the **Federal Register**.

In accordance with 5 U.S.C. 552a(r), the Department has provided a report to OMB and Congress on the proposed new routine use.

Dated: July 20, 2005.

Paul R. Corts,

Assistant Attorney General for Administration.

JUSTICE/CRT–001

SYSTEM NAME:

Central Civil Rights Division Index File and Associated Records, CRT–001.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

* * * * *

* * * [Add the new routine use (16) to read as follows.]

(16) To the local community or public when the incident investigated has become a matter of public knowledge, the investigation is closed, and the Assistant Attorney General, Civil Rights Division, personally determines that, because there is a reasonable potential for civil unrest or a severe loss of confidence by the public in the investigative process, the disclosure of information explaining the Department's decision to close a criminal matter is appropriate.

* * * * *

[FR Doc. 05–14944 Filed 7–28–05; 8:45 am]

BILLING CODE 4410–13–P

DEPARTMENT OF LABOR

Employment Standards Administration; Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29

CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from the date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon And Related Acts,'' shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department.

Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3014, Washington, DC 20210.

Modification to General Wage Determination Decisions

The number of decisions listed to the Government Printing Office document entitled ''General Wage Determinations Issued Under the Davis-Bacon and related Acts'' being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decision being modified.

Volume I

Connecticut
CT20030001 (Jun. 13, 2003)
Massachusetts
MA20030002 (Jun. 13, 2003)
MA20030003 (Jun. 13, 2003)
MA20030008 (Jun. 13, 2003)
MA20030020 (Jun. 13, 2003)
MA20030021 (Jun. 13, 2003)
Maine
ME20030005 (Jun. 13, 2003)
ME20030007 (Jun. 13, 2003)
ME20030009 (Jun. 13, 2003)
ME20030010 (Jun. 13, 2003)
New Hampshire
NH20030004 (Jun. 13, 2003)
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NH20030008 (Jun. 13, 2003)
New Jersey
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NJ20030005 (Jun. 13, 2003)
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Volume II

Delaware
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MD20030043 (Jun. 13, 2003)
MD20030055 (Jun. 13, 2003)
Pennsylvania
PA20030001 (Jun. 13, 2003)
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PA20030004 (Jun. 13, 2003)
PA20030005 (Jun. 13, 2003)
PA20030006 (Jun. 13, 2003)
PA20030007 (Jun. 13, 2003)
PA20030008 (Jun. 13, 2003)
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PA20030040 (Jun. 13, 2003)
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IL20030031 (Jun. 13, 2003)
IL20030032 (Jun. 13, 2003)
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IL20030061 (Jun. 13, 2003)
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Indiana
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IN20030006 (Jun. 13, 2003)
IN20030018 (Jun. 13, 2003)
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General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under the Davis-Bacon And Related Acts''. This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

General wage determinations issued under the Davis-Bacon and related Acts are available electronically at no cost on the Government Printing Office site at *http://www.access.gpo/davisbacon*. They are also available electronically by subscription to the Davis-Bacon Online Service (*http://davisbacon.fedworld.gov*) of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068. This subscription offers value-added features such as electronic delivery of modified wage decisions directly to the user's desktop, the ability to access prior wage decisions issued during the year, extensive Help desk Support, etc.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 21st day of July 2005.

Terry Sullivan,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 05–14726 Filed 7–28–05; 8:45 am]

BILLING CODE 4510–27–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 05–124]

NASA Advisory Committee; Notice of Renewal

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of renewal of the charter for the Return to Flight Task Group.

SUMMARY: Pursuant to sections 14(b)(1) and 9(c) of the Federal Advisory Committee Act (Pub. L. 92–463), and after consultation with the Committee Management Secretariat, General Services Administration, the Administrator of the National Aeronautics and Space Administration has determined that a renewal of the Agency-established Return to Flight Task Group advisory committee is in the public interest in connection with the performance of duties imposed upon NASA by law. The structure and duties of this committee are unchanged.

FOR FURTHER INFORMATION CONTACT: Ms. P. Diane Rausch, Office of External Relations, National Aeronautics and Space Administration, Washington, DC 20546, (202) 358–4510.

SUPPLEMENTARY INFORMATION: Information regarding the Return to Flight Task Group is available on the World Wide Web at: *http://www.nasa.gov/returntoflight/main/index.html.*

Dated: July 22, 2005.

P. Diane Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 05–15091 Filed 7–28–05; 8:45 am]

BILLING CODE 7510–13–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 030–36499]

Notice of License Amendment Request for Eastern Technologies, Inc.'s Facility in Northumberland, PA and Opportunity to Request a Hearing

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of consideration of a license amendment request and opportunity to request a hearing.

DATES: A request for a hearing must be filed by September 27, 2005.

FOR FURTHER INFORMATION CONTACT: Donna M. Janda, Division of Nuclear Materials Safety, Region I, 475 Allendale Road, King of Prussia, Pennsylvania, 19406, telephone (610) 337–5371, fax (610) 337–5269; or by e-mail: *dmj@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The Nuclear Regulatory Commission (NRC) is considering an amendment to Eastern Technologies, Inc., Materials License No. 01–30362–01, to change the location of use for operation of a nuclear laundry from 51 River Road, Berwick, Pennsylvania, the location currently approved on the license, to 3114 Point Township Drive, Northumberland, Pennsylvania. The licensee never initiated licensed activities at the Berwick, Pennsylvania location. The *Federal Register* Notice regarding consideration of the licensee's initial application was previously published

on March 30, 2004 (Volume 69, Number 61, pages 16613–16614). The license, which was initially issued on November 10, 2004, authorizes the collection, laundering, and decontamination of contaminated clothing and other launderable non-apparel items; collection and decontamination of respirators and other items that are used in conjunction with a protective clothing program; and for the possession of contaminated equipment in the licensee's portable laundry unit.

If the NRC approves the amendment, the approval will be documented in an amendment to NRC License No. 01–30362–01. Before approving the proposed amendment, the NRC will need to make the findings required by the Atomic Energy Act of 1954, as amended, and NRC's regulations. An environmental assessment for this licensing action is not required, since this action is categorically excluded under 10 CFR 51.22(c)(14)(xiv).

II. Opportunity To Request a Hearing

The NRC hereby provides notice that this is a proceeding on a license amendment application. In accordance with the general requirements in Subpart C of 10 CFR Part 2,[1] 'Rules of General Applicability; Hearing Requests, Petitions to Intervene, Availability of Documents, Selection of Specific Hearing Procedures, Presiding Officer Powers, and General Hearing Management for NRC Adjudicatory Hearings,'' any person whose interest may be affected by this proceeding and who desires to participate as a party must file a written request for a hearing and a specification of the contentions which the person seeks to have litigated in the hearing.

In accordance with 10 CFR 2.302 (a), a request for a hearing must be filed with the Commission either by:

1. First class mail addressed to: Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications;

2. Courier, express mail, and expedited delivery services: Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, Attention Rulemakings and Adjudications Staff between 7:45 a.m. and 4:15 p.m., Federal workdays;

3. E-mail addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, *HEARINGDOCKET@NRC.GOV;* or

4. By facsimile transmission addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC, Attention: Rulemakings and Adjudications Staff, at (301) 415–1101; verification number is (301) 415–1966.

In accordance with 10 CFR 2.302 (b), all documents offered for filing must be accompanied by proof of service on all parties to the proceeding or their attorneys of record as required by law or by rule or order of the Commission, including:

1. The applicant, by delivery to Eastern Technologies, Inc., P.O. Box 409, Ashford, Alabama 36312; and,

2. The NRC staff, by delivery to the Office of the General Counsel, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, or by mail addressed to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Hearing requests should also be transmitted to the Office of the General Counsel, either by means of facsimile transmission to (301) 415–3725, or by e-mail to *ogcmailcenter@nrc.gov*.

The formal requirements for documents are contained in 10 CFR 2.304(b), (c), (d), and (e), and must be met. However, in accordance with 10 CFR 2.304(f), a document filed by electronic mail or facsimile transmission need not comply with the formal requirements of 10 CFR 2.304(b), (c), and (d), if an original and two (2) copies otherwise complying with all of the requirements of 10 CFR 2.304(b), (c), and (d) are mailed within two (2) days thereafter to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff.

In accordance with 10 CFR 2.309(b), a request for a hearing must be filed within 60 days of the date of publication of this **Federal Register** notice.

In addition to meeting other applicable requirements of 10 CFR Part 2 of the NRC's regulations, the general requirements involving a request for a hearing filed by a person other than an applicant must state:

1. The name, address and telephone number of the requestor;

2. The nature of the requestor's right under the Act to be made a party to the proceeding;

3. The nature and extent of the requestor's property, financial or other interest in the proceeding;

4. The possible effect of any decision or order that may be issued in the proceeding on the requestor's interest; and

5. The circumstances establishing that the request for a hearing is timely in accordance with 10 CFR 2.309(b).

In accordance with 10 CFR 2.309(f)(1), a request for hearing or petitions for leave to intervene must set forth with particularity the contentions sought to be raised. For each contention, the request or petition must:

1. Provide a specific statement of the issue of law or fact to be raised or controverted;

2. Provide a brief explanation of the basis for the contention;

3. Demonstrate that the issue raised in the contention is within the scope of the proceeding;

4. Demonstrate that the issue raised in the contention is material to the findings that the NRC must make to support the action that is involved in the proceeding;

5. Provide a concise statement of the alleged facts or expert opinions which support the requestor's/petitioner's position on the issue and on which the requestor/petitioner intends to rely to support its position on the issue; and

6. Provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. This information must include references to specific portions of the application that the requestor/petitioner disputes and the supporting reasons for each dispute, or, if the requestor/petitioner believes the application fails to contain information on a relevant matter as required by law, the identification of each failure and the supporting reasons for the requestor's/petitioner's belief.

In addition, in accordance with 10 CFR 2.309(f)(2), contentions must be based on documents or other information available at the time the petition is to be filed, such as the application or other supporting documents filed by the applicant, or otherwise available to the petitioner. Contentions may be amended or new contentions filed after the initial filing only with leave of the presiding officer.

Requestors/petitioners should, when possible, consult with each other in preparing contentions and combine similar subject matter concerns into a joint contention, for which one of the co-sponsoring requestors/petitioners is designated the lead representative. Further, in accordance with 10 CFR 2.309(f)(3), any requestor/petitioner that wishes to adopt a contention proposed by another requestor/petitioner must do so in writing within ten days of the date the contention is filed, and designate a representative who shall have the authority to act for the requestor/petitioner.

[1] The references to 10 CFR Part 2 in this notice refer to the amendments to the NRC Rules of Practice, 69 FR 2182 (January 14, 2004), codified at 10 CFR Part 2.

In accordance with 10 CFR 2.309(g), a request for hearing and/or petition for leave to intervene may also address the selection of the hearing procedures, taking into account the provisions of 10 CFR 2.310.

III. Further Information

Documents related to this action, including the application for the license amendment and supporting documentation, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html*. From this site, you can access the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The documents currently on file include the Eastern Technologies, Inc. License Application dated January 30, 2004 (ADAMS Accession No. ML052020187), letters containing additional information to support the license application dated June 15, 2004 (ML052020196) and October 1, 2004 (ML042800481), License Amendment Request dated April 6, 2005 (ML051220551), and letters containing additional information to support the amendment request dated May 26, 2005 (ML052020202), and June 24, 2005 (ML051790049). Portions of the documents with ADAMS Accession Nos. ML052020187, ML052020196, and ML052020202 have been redacted to protect information important to security of licensed material. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at (800) 397–4209 or (301) 415–4737, or by e-mail to *pdr@nrc.gov*.

Documents related to operations conducted under this license not specifically referenced in this Notice may not be electronically available and/or may not be publicly available. Persons who have an interest in reviewing these documents should submit a request to NRC under the Freedom of Information Act (FOIA). Instructions for submitting a FOIA request can be found on the NRC's Web site at *http://www.nrc.gov/reading-rm/foia/foia-privacy.html*.

Dated at King of Prussia, Pennsylvania this 22nd day of July, 2005.

For the Nuclear Regulatory Commission.

John D. Kinneman,

Chief, Materials Security & Industrial Branch, Division of Nuclear Materials Safety, Region I.

[FR Doc. E5–4066 Filed 7–28–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Nuclear Waste; Notice of Meeting

The Advisory Committee on Nuclear Waste (ACNW) will hold its 162nd meeting on August 2–4, 2005, Room T–2B3, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland.

The schedule for this meeting is as follows:

Tuesday, August 2, 2005

The Committee will conduct a 2-day working group meeting on Waste Determinations.

8:30 a.m.–11:25 a.m. Session 1: (Open)—This session will provide a background for waste determinations. The ACNW Moderator will discuss the purpose of the Working Group meeting and provide an overview of the meeting sessions. DOE staff will provide an overview of DOE's current and planned management of tank waste at four tank sites, including waste handling practices, waste streams likely to require waste determinations and their characteristics. NRC staff will provide an overview of NRC's involvement in waste determination evaluations to date, a summary of new waste determination provisions in the National Defense Authorization Act (NDAA) of 2005, and anticipated waste determination activities by the NRC.

11:25 a.m.–4:15 p.m. Session 2: (Open)—Invited experts will address state-of-the-art and R&D technology for waste retrieval including removal of common target radionuclides, and technology for characterizing tank heels. In addition, a historical perspective on the definition of ''highly radioactive waste'' in the regulations and in practice will be provided. There will also be a roundtable discussion of Session 2 topics.

4:15 p.m.–5 p.m. Session 3: (Open)—Invited experts will discuss the status of technology for using cementitious materials to stabilize wastes.

Wednesday, August 3, 2005

8:30 a.m.–11:35 a.m. Session 3, continued: (Open)—Invited experts will address the status and prospects of predicting durability of grouts; performance assessment perspectives on waste disposal; and practical approaches to make decisions on waste determinations. There will also be a roundtable discussion of Session 3 topics.

11:35 a. m.–4:40 p.m. Session 4: (Open)—Invited experts will address status of technology for environmental monitoring of on-site waste disposal, monitoring of engineered barriers performance, and non-destructive monitoring for cementitious waste forms. There will also be a roundtable discussion of Session 4 topics, as well as topics from other sessions as they relate to the waste determination provisions in the NDAA.

4:40 p.m.–5 p.m.: (Open)—The ACNW Committee members will discuss the main thoughts and findings of the Working Group meeting, and a potential letter/report to the Commission.

Thursday, August 4, 2005

10:15 a.m.–10:20 a.m.: Opening Statement: (Open)—The ACNW Chairman will make opening remarks regarding the conduct of today's sessions.

10:20 a.m.–11:30 a.m.: Discussion of Current Letters/Reports: (Open)—The Committee will discuss prepared draft letters and reports on April 2005 Center for Nuclear Waste Regulatory Analyses Program Review, NRC Office of Nuclear Regulatory Research Generic Waste-Related Research, and Risk-Informing Nonreactor Activities.

12:45 p.m.–3:45 p.m.: Status of Repository Design Issues: (Open)—The Committee will hear a briefing by the NRC staff on issues related to the design of a geologic repository at Yucca Mountain, Nevada. The general areas to be addressed are: ''NRC Staff Views on the Sufficiency of Current U.S. Department of Energy (DOE) Level of Design Detail''; ''Recent NRC Staff Visits to Spent Nuclear Fuel Handling Facilities in France (Cogema), and the United States (Idaho and Washington)''; and ''Status of Development of NRC's Pre-Closure Safety Assessment Tool.''

4 p.m.–4:45 p.m.: ACNW Low-Level Waste White Paper: Draft 3: (Open)—The Committee will comment on the third draft of the white paper on low-level waste.

4:45 p.m.–5:15 p.m.: Miscellaneous: (Open)—The Committee will discuss matters related to the conduct of ACNW activities, and specific issues that were not completed during previous meetings, as time and availability of information permit. Discussions may include future Committee meetings.

Procedures for the conduct of and participation in ACNW meetings were published in the **Federal Register** on October 18, 2004 (69 FR 61416). In accordance with these procedures, oral or written statements may be presented by members of the public. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Persons desiring to make oral statements should

notify Ms. Sharon A. Steele, (Telephone 301–415–6805), between 7:30 a.m. and 4 p.m. ET, as far in advance as practicable so that appropriate arrangements can be made to schedule the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting will be limited to selected portions of the meeting as determined by the ACNW Chairman. Information regarding the time to be set aside for taking pictures may be obtained by contacting the ACNW office prior to the meeting. In view of the possibility that the schedule for ACNW meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should notify Ms. Steele as to their particular needs.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted, therefore can be obtained by contacting Ms. Steele.

ACNW meeting agenda, meeting transcripts, and letter reports are available through the NRC Public Document Room (PDR) at *pdr@nrc.gov,* or by calling the PDR at 1–800–397–4209, or from the Publicly Available Records System 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).

Video Teleconferencing service is available for observing open sessions of ACNW meetings. Those wishing to use this service for observing ACNW meetings should contact Mr. Theron Brown, ACNW Audiovisual 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 video teleconferencing link. The availability of video teleconferencing services is not guaranteed.

Dated: July 25, 2005.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. E5–4065 Filed 7–28–05; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 1–03671]

Issuer Delisting; Notice of Application of General Dynamics Corporation To Withdraw Its Common Stock, $1.00 Par Value, From Listing and Registration on the Pacific Exchange, Inc.

July 22, 2005.

On June 29, 2005, General Dynamics Corporation, a Delaware corporation (''Issuer''), filed an application with the Securities and Exchange Commission (''Commission''), pursuant to Section 12(d) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 12d2–2(d) thereunder,[2] to withdraw its common stock, $1.00 par value (''Security''), from listing and registration on the Pacific Exchange, Inc. (''PCX'').

The Board of Directors (''the Board'') of the Issuer approved resolutions on May 4, 2005 to withdraw the Security from listing on PCX. The Issuer stated that the following reasons factored into the Board's decision to withdraw the Security from PCX: (i) The administrative burden of continued listing on PCX does not justify the Issuer's continued listing on such exchange; and (ii) the principal listing for the Security is the New York Stock Exchange, Inc. (''NYSE'') and the Security will continue to be listed on NYSE.

The Issuer stated in its application that it has complied with applicable rules of PCX by providing PCX with the required documents governing the withdrawal of securities from listing and registration on PCX. The Issuer's application relates solely to the withdrawal of theSecurities from listing on PCX and shall not affect its continued listing on NYSE or the Chicago Stock Exchange, Inc., or its obligation to be registered under Section 12(b) of the Act.[3]

Any interested person may, on or before August 16, 2005 comment on the facts bearing upon whether the application has been made in accordance with the rules of PCX, and what terms, if any, should be imposed by the Commission for the protection of investors. All comment letters may be submitted by either of the following methods:

Electronic Comments

- Send an e-mail to *rule-comments@sec.gov*. Please include the File Number 1–03671 or;

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number 1–03671. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/delist.shtml*). Comments are also available for public inspection and copying in the Commission's Public Reference Room. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–4023 Filed 7–28–05; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

[3] 15 U.S.C. 78*l*(b).

[4] 17 CFR 200.30–3(a)(1).

SECURITIES AND EXCHANGE COMMISSION

[File No. 1–09912]

Issuer Delisting; Notice of Application of NOVA Gas Transmission Ltd. To Withdraw Its 7⅞% Debentures (due April 1, 2023), From Listing and Registration on the New York Stock Exchange, Inc.

July 25, 2005.

On June 29, 2005, NOVA Gas Transmission Ltd., a company organized in Alberta, Canada (''Issuer''), filed an application with the Securities and Exchange Commission (''Commission''), pursuant to Section 12(d) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 12d2–2(d) thereunder,[2] to withdraw its 7⅞% debentures (due April 1, 2023) (''Security''), from listing and

[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

registration on the New York Stock Exchange, Inc. (''NYSE'').

The Board of Directors (''Board'') of the Issuer unanimously approved resolutions on June 3, 2005, to withdraw the Security from listing and registration on NYSE. The Issuer stated the following reasons factored into the Board's decision to withdraw the Security from NYSE: (1) The fact that the Issuer has a limited number of security holders of record for the Security; (2) the limited volume of trading in the Security; and (3) the costs associated with maintaining the Issuer's status as a NYSE-listed Issuer, which obligations the Issuer could suspend immediately absent the listing of the Security. In this regard, the Board took into account that the Security had fewer than 25 holders of record.

The Issuer stated in its application that it has complied with NYSE's rules governing an issuer's voluntary withdrawal of a security from listing and registration by providing NYSE with the required documents governing the removal of securities from listing and registration on NYSE.

The Issuer's application relates solely to the withdrawal of the Securities from listing on the NYSE and from registration under Section 12(b) of the Act,[3] and shall not affect its obligation to be registered under Section 12(g) of the Act.[4]

Any interested person may, on or before August 18, 2005, comment on the facts bearing upon whether the application has been made in accordance with the rules of NYSE, and what terms, if any, should be imposed by the Commission for the protection of investors. All comment letters may be submitted by either of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/delist.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include the File Number 1–09912; or

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number 1–09912. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/delist.shtml*). Comments are also available for public inspection and copying in the Commission's Public Reference Room. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–4068 Filed 7–28–05; 8:45 am]

BILLING CODE 8010–01–P

[3] 15 U.S.C. 78*l*(b).

[4] 15 U.S.C. 78*l*(g).

[5] 17 CFR 200.30–3(a)(1).

SECURITIES AND EXCHANGE COMMISSION

[File No. 1–11763]

Issuer Delisting; Notice of Application of TransMontaigne Inc. To Withdraw Its Common Stock, $.01 Par Value, From Listing and Registration on the American Stock Exchange LLC

July 25, 2005.

On May 2, 2005, TransMontaigne Inc., a Delaware corporation (''Issuer''), filed an application with the Securities and Exchange Commission (''Commission''), pursuant to Section 12(d) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 12d2–2(d) thereunder,[2] to withdraw its common stock, $.01 par value (''Security''), from listing and registration on the American Stock Exchange LLC (''Amex'').

On April 26, 2005, the Board of Directors (''Board'') of the Issuer approved resolutions to withdraw the Security from listing and registration on Amex and to list the security on the New York Stock Exchange, Inc. (''NYSE''). The Board believes that it is in the best interest of the Issuer to withdraw the Security from Amex and list the Security on NYSE. The Issuer stated that the Security commenced trading on NYSE on May 5, 2005.

The Issuer stated in its application that it has met the requirements of Amex Rule 18 by complying with all applicable laws in effect in the state of Delaware, in which it is incorporated, and provided written notice of withdrawal to Amex.

The Issuer's application relates solely to the withdrawal of the Security from listing on Amex, and shall not affect its continued listing on NYSE or its obligation to be registered under Section 12(b) of the Act.[3]

Any interested person may, on or before August 18, 2005, comment on the facts bearing upon whether the application has been made in accordance with the rules of Amex, and what terms, if any, should be imposed by the Commission for the protection of investors. All comment letters may be submitted by either of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/delist.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include the File Number 1–11763 or;

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number 1–11763. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/delist.shtml*). Comments are also available for public inspection and copying in the Commission's Public Reference Room. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–4063 Filed 7–28–05; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

[3] 15 U.S.C. 78*l*(b).

[4] 17 CFR 200.30–3(a)(1).

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

In the Matter of Greyfield Capital, Inc.; Order of Suspension of Trading

July 27, 2005.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Greyfield Capital, Inc. (''GRYF'') because of questions as to whether the company was validly reorganized as an Oregon company and the identity of its current officers and directors, whether there have been inaccurate statements about what line of business it is in, whether its recent issuance of shares was validly authorized, and whether there are exaggerations concerning the magnitude of the company's operations in recent press releases.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed company.

Therefore, *it is ordered*, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the above-listed company is suspended for the period from 9:30 a.m. EDT July 27, 2005 through 11:59 p.m. EDT, on August 9, 2005.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 05–15120 Filed 7–27–05; 12:15 pm]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

In the Matter of UCAP, Inc.; Order of Suspension of Trading

July 27, 2005.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of UCAP, Inc. because the company has failed to file timely periodic reports with the Commission in violation of Section 13(a) of the Securities Exchange Act of 1934, since the period ended March 31, 2003.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of UCAP, Inc.

Therefore, *it is ordered*, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in UCAP, Inc. is suspended for the period from 9:30 a.m. EDT, July 27, 2005 through 11:59 p.m. EDT, on August 9, 2005.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 05–15121 Filed 7–27–05; 12:15 pm]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52100; File No. SR–CBOE–2005–48]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto To Amend Rule 8.3A Relating to Class Quoting Limits

July 21, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 17, 2005, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. On July 18, 2005, the CBOE filed Amendment No. 1 to the proposed rule change.[3] The CBOE has designated this proposal as one constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule under Section 19(b)(3)(A)(i) of the Act,[4] and Rule 19b–4(f)(1) thereunder,[5] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to amend CBOE Rule 8.3A pertaining to Class Quoting Limits (''CQL''). The text of the proposed rule change is available on the Exchange's Internet Web site (*http://www.cboe.com*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

CBOE Rule 8.3A, Maximum Number of Market Participants Quoting Electronically per Product, establishes the upper limit, or CQL, on the number of members that may quote electronically in a particular product traded on the CBOE's Hybrid Trading System and Hybrid 2.0 Platform.[6] The methodology for determining which members may submit electronic quotations in a product is governed by paragraphs (a) through (c) of CBOE Rule 8.3A.

The purpose of this proposed rule change is to amend CBOE Rule 8.3A in order to expressly note CBOE's interpretation that a Market-Maker, who holds an appointment pursuant to CBOE Rule 8.3 in an option class traded on the Hybrid Trading System or the Hybrid 2.0 Platform but does not quote electronically in that option class under the provisions of CBOE Rule 8.7(d)(i), does not count towards the CQL in that option class.

Pursuant to CBOE Rule 8.3, a Market-Maker has the right to quote (a) electronically in all classes traded on

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the Exchange made non-substantive changes to the text of proposed CBOE Rule 8.3A.03 to clarify that Market Makers who do not quote electronically in an option class will not count towards the CQL for such option class. The effective date of the original proposed rule change is June 17, 2005, and the effective date of Amendment No. 1 is July 18, 2005. For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change, as amended, under Section 19(b)(3)(C) of the Act, the Commission considers such period to commence on July 18, 2005, the date on which the Exchange filed Amendment No. 1. *See* 15 U.S.C. 78s(b)(3)(C).

[4] 15 U.S.C. 78s(b)(3)(A)(i).

[5] 17 CFR 240.19b–4(f)(1).

[6] *See* CBOE Rule 8.3A.01. *See also* Securities Exchange Act Release No. 51429 (March 24, 2005), 70 FR 16536 (March 31, 2005) (SR–CBOE–2004–58).

the Hybrid Trading System that are located in one trading station and a certain number of classes traded on the Hybrid 2.0 Platform that are located in one trading station and (b) in open outcry in all classes traded on the Exchange. However, pursuant to CBOE Rule 8.7(d)(i), a Market-Maker that does not transact more than 20% of his contract volume electronically in an appointed Hybrid class during any calendar quarter is not obligated to quote electronically in any designated series within that option class.

In establishing the rules relating to CQLs, the CBOE did not intend, and there would be no purpose, for a Market-Maker, who holds an appointment in a Hybrid class but elects to trade only in open outcry, to count towards the CQL in that option class. Accordingly, the CBOE believes that this interpretation is consistent with the purpose of CBOE Rule 8.3A, which, as noted above, is to limit the number of members that may quote electronically in a particular product to ensure that the Exchange has the ability to effectively handle all quotes generated by members. Although the CBOE anticipates that this situation may arise in only a handful of option classes, absent this interpretation, the CQL in these option classes could be reached even though a certain number of appointed Market-Makers do not submit electronic quotations. As a consequence, other members who might be willing to provide competitive quotations would be prevented from doing so unless the CBOE determines to increase the CQL in accordance with CBOE Rule 8.3A.

In proposed CBOE Rule 8.3A.03, the CBOE notes that in the event the Market-Maker later determines to quote electronically in that option class in which he holds an appointment, the Marker-Maker may do so and would count towards the CQL for that option class, which is consistent with the provisions of CBOE Rule 8.3A. If the total number of members quoting electronically exceeds the CQL for that option class, the option class would have an ''increased CQL'' as described in CBOE Rule 8.3A.01(a). Reduction in any ''increased CQL'' will be in accordance with the procedures described in CBOE Rule 8.3A.01(a).

2. Statutory Basis

The CBOE believes that the proposed rule change is consistent with the Act and the rules and regulations under the Act applicable to a national securities exchange and, in particular, the requirements of Section 6(b) of the Act.[7] Specifically, the Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b)(5),[8] which require the rules of an exchange to be designed to promote just and equitable principles of trade, serve to remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange 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

The foregoing proposed rule change will take effect upon filing with the Commission pursuant to Section 19(b)(3)(A)(i) of the Act[9] and Rule 19b–4(f)(1) thereunder,[10] because it constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule.

At any time within 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.[11]

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–CBOE–2005–48 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number SR–CBOE–2005–48. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the CBOE.

All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2005–48 and should be submitted on or before August 19, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–4027 Filed 7–28–05; 8:45 am]

BILLING CODE 8010–01–P

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A)(i).

[10] 17 CFR 240.19b–4(f)(1).

[11] *See supra* note 3.

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52094; File No. SR–CHX–2004–11]

Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Order Approving Proposed Rule Change and Amendment No. 1 Thereto and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 2 to the Proposed Rule Change to Implement a Fully-Automated Electronic Book for the Display and Execution of Orders in Securities That Are Not Assigned to a Specialist

July 21, 2005.

I. Introduction

On February 20, 2004, the Chicago Stock Exchange, Inc. (''CHX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to implement a fully-automated electronic book for the display and execution of orders in securities that are not assigned to a specialist. On June 18, 2004, the Exchange amended the proposed rule change.[3] The proposed rule change, as amended by Amendment No. 1, was published for comment in the **Federal Register** on July 19, 2004.[4] The Commission received no comments on the proposed rule change, as amended. On May 20, 2005, the Exchange filed Amendment No. 2 to the proposed rule change.[5] This order approves the proposed rule change, as amended and approves Amendment No. 2 on an accelerated basis. In addition, the Commission solicits comments from interested persons on Amendment No. 2.

II. Description of the Proposed Rule Change

The Exchange proposes to implement a fully-automated electronic book for the display and execution of orders in securities that are not assigned to a CHX specialist. Under the Exchange's current rules, securities that are not assigned to a CHX specialist are traded in two ways: (a) securities can be placed in the cabinet [6] or (b) securities can be removed from the cabinet and assigned to a lead market maker for trading.[7] According to the Exchange, the procedures associated with the trading of these securities are quite manual. For example, the Exchange maintains a physical location, known as the cabinet, at which written information is manually maintained regarding existing bids, offers, and orders for each cabinet security. Orders for these cabinet securities are filled manually, and each transaction is recorded on a written trade ticket before being entered into the Exchange's systems for public dissemination. Securities that are assigned to lead market makers also are subject to manual procedures similar to those used for cabinet securities, except that these orders are also entered into the Exchange's systems so that they can be automatically quoted.

The proposed rule change, as amended, would replace these manual procedures with a new fully-automated electronic book that would display and match eligible limit orders in these securities, without the participation of a specialist or lead market maker. Specifically, as described below, this new electronic book would allow the Exchange's participants, whether or not they are on the Exchange's floor, to enter orders into an automated matching system operated by the Exchange for possible execution.

Eligible securities and eligible orders. Under the proposed rules, all securities eligible for trading on the Exchange that are not assigned to a specialist would be traded in the electronic book.

Orders sent to the electronic book would be required to be specifically designated for handling in the electronic book.[8] The electronic book would accept only round-lot limit orders that are good for the day on which they are submitted.[9] No odd-lot orders or good-till-cancelled orders would be accepted.

Orders could be designated as ''immediate or cancel'' or ''fill or kill'' orders to ensure that they are immediately filled or cancelled.[10] Orders could also be designated as ''cross'' or ''cross with size'' to permit the handling of orders to buy and sell the same security.[11] Orders could not be designated with any other conditions and, except for certain cross orders, would be required to be for regular way settlement.[12]

In addition, otherwise eligible orders would be cancelled in certain circumstances, to ensure compliance with applicable intermarket trading rules. For example, if an order in a listed security improperly crosses or locks another Intermarket Trading System (''ITS'') market, the order would not be displayed, but would be immediately cancelled to ensure compliance with the ITS Plan's rules relating to locked markets.[13] Similarly, inbound orders in Nasdaq/NM securities that lock or cross the NBBO would be automatically cancelled.[14]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Ellen J. Neely, Senior Vice President and General Counsel, CHX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation (''Division''), Commission, dated June 17, 2004, and the attached Form 19b–4, which replaced the original filing in its entirety (''Amendment No. 1'').

[4] *See* Securities Exchange Act Release No. 50002 (July 12, 2004), 69 FR 43036 (''Notice'').

[5] *See* Form 19b–4 dated May 20, 2005, which replaced the original filing in its entirety (''Amendment No. 2''). Amendment No. 2 clarifies the operation of the electronic book in particular circumstances; clarifies the obligations of a market maker in the electronic book; incorporates new provisions relating to orders for non-regular way settlement and to a floor member's responsibility to clear the electronic book before sending orders to other markets; and updates the filing to reflect the Exchange's recent demutualization. The amended rule text proposed in Amendment No. 2 is available on the Exchange's Web site (http://www.chx.com), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

[6] *See* CHX Article XX, Rule 11.

[7] *See* CHX Article XXXIV, Rule 3, Interpretation and Policy .02.

[8] *See* Proposed CHX Article XXA, Rule 2.

[9] *Id.*

[10] An immediate or cancel order would be executed, in whole or in part, as soon as it is received by the electronic book. If execution is not possible, or if only a partial execution is possible, any unexecuted balance of the order would be immediately cancelled. A fill or kill order would be executed in full as soon as it is received. If execution is not possible, the entire order would be immediately cancelled. *See* Proposed CHX Article XXA, Rule 2(c)(1) and (2).

[11] A ''cross'' order would be an order to buy and sell the same security at a specific price that is better than the best bid and offer (''BBO'') displayed in the electronic book and, for listed securities, equal to or better than the National Best Bid or Offer (''NBBO''). A ''cross with size'' order would be an order to buy and sell at least 25,000 shares of the same security: (a) At a price equal to or better than the BBO displayed in the electronic book and, for listed securities, equal to or better than the NBBO; (b) where the size of the order is larger than the aggregate size of all interest displayed in the electronic book at that price; and (c) where neither side of the order is for the account of the CHX participant sending the order to the electronic book. The Exchange represented that these definitions are substantially similar to the descriptions of the types of cross transactions that can occur today on the Exchange's floor without interference from the trading crowd. *See* CHX Article XX, Rule 23.

[12] *See* Proposed CHX Article XXA, Rules 2(b) and 2(c)(5). Under the proposed rules, orders could be designated as ''non-regular way cross'' and ''non-regular way cross with size.'' These cross and cross with size orders would be for non-regular way settlement and would be executed without regard to either the NBBO or orders for regular way settlement that could be in the electronic book. The Exchange represented that the procedures for cross transactions with non-regular way settlement are the same as the Exchange's current procedures on the floor.

[13] *See* Proposed CHX Article XXA, Rule 2(e).

[14] The Exchange represented that this handling of Nasdaq/NM securities is not required by any intermarket plan, but is consistent with the rules governing the Exchange's participation in The Nasdaq Stock Market, Inc.'s (''Nasdaq's'') SuperMontage system.

Operating hours. Under the proposed rules, the electronic book would operate during the Exchange's Primary Trading Session and its Post-Primary Trading Session.[15] Specifically, the electronic book would accept orders on each day for a particular security once the primary market in that security opens.[16] The electronic book would close at 3:30 p.m. (Central Time) and all unexecuted orders would be automatically cancelled.

Routing of orders. Orders could be sent to the electronic book through the Exchange's MAX system or through any other communications lines approved by the Exchange for the delivery of orders by Exchange participants.[17] The Exchange anticipates that all CHX participants—whether they are located on the Exchange's trading floor or off the floor—would be able to receive access to the electronic book. The electronic book would also accept and automatically execute commitments sent by market centers that participate in the ITS. National Association of Securities Dealers, Inc. (''NASD'') market participants would have direct telephone access to the supervisory center for the electronic book to enter orders in the Nasdaq/NM securities in which they are registered, as required by the OTC/UTP Plan.[18]

Ranking and display of orders. Except for cross and cross-with-size orders, all orders received by the electronic book would be ranked according to their price and time of receipt and would be displayed to the public when they constitute the BBO in the electronic book for a security.[19] In the Notice, the Exchange stated that it initially plans to disseminate these best bids and offers through the systems used for that purpose today—through the CTA/CQ Plan for listed securities, and through the OTC/UTP Plan for Nasdaq/NM securities.[20]

Automated matching of orders. In the electronic book, orders would automatically match against each other, in price/time priority.[21] Specifically, an incoming order would be matched against one or more orders in the electronic book, in the order of their ranking, at the price of each order, for the full amount of shares available at that price, or for the size of the incoming order, if smaller. If an incoming order could not be matched when it is received and it is not designated as an order that should be immediately cancelled, the order would be placed in the electronic book.

Inbound ITS commitments, if priced at or better than the current BBO in the electronic book, would be automatically matched against the order(s) reflected in the electronic book's BBO, for the full amount of shares at that price, and any remaining portion of the ITS commitment would be automatically cancelled.[22] To ensure that the electronic book does not trade through another market in violation of the ITS Plan's trade-through provisions, orders in listed securities would only be matched at prices that are equal to, or better than, the NBBO.[23]

Cross or cross with size orders would be automatically executed if they meet the requirements for those types of orders. If they do not meet applicable requirements, they would be immediately cancelled.[24]

Finally, unless a customer specifically requests otherwise, all orders in securities that are traded in the electronic book that are received on the floor of the Exchange would have to clear the electronic book before the orders could be routed to another market. Any customer directives for special handling of orders would have to be documented and reported to the Exchange.[25]

No distinction between agency and professional orders. Under the proposed rules, agency orders (entered on behalf of a customer) and professional or proprietary orders (entered for the account of a CHX participant or other broker-dealer) would be handled in an identical way in the electronic book's matching algorithms.

Cancellations of transactions and handling of clearly erroneous transactions. Under the proposed rules, participants that make a transaction in demonstrable error could agree to cancel and unwind the transaction, subject to the approval of the Exchange.[26] For purposes of the electronic book, the Exchange also proposes to adopt a policy for the handling of clearly erroneous transactions.[27] This policy would allow the Exchange to: (a) Review, and potentially modify or cancel, executions where one party believes that the terms of the transaction were clearly erroneous when submitted, and (b) modify or cancel executions that result from a disruption or malfunction in the use or operation of the electronic book, or any communications system associated with the electronic book. The proposed rules set out procedures for each of these reviews, including specific means for participants to appeal the Exchange's decisions.

Registration of market makers. Under the proposal, Exchange participants could seek registration as market makers in one or more of the securities traded in the electronic book. A market maker would be required to maintain a continuous two-sided market in each security in which he or she is registered, and to engage, to a reasonable degree under existing circumstances, in a course of dealing in the securities in which he or she is registered that is reasonably calculated to contribute to the maintenance of a fair and orderly market.[28] In exchange, these market makers would be entitled to utilize exempt credit for financing their market maker transactions. The proposed rules set out a process for market makers to apply for this registration and for the

[15] The Exchange's Primary Trading Session is open, for a particular security, during the same times that such security is traded on its primary market (*e.g.*, 8:30 to 3 p.m. Central Time, for most securities). The Exchange's Post-Primary Trading Session operates until 3:30 p.m. Central Time. *See* CHX Article IX, Rule 10(b).

[16] The proposed rules define the primary market as the listing market for a security, unless otherwise designated by the Exchange's Committee on Exchange Procedure; provided, however, that if a security is traded by the New York Stock Exchange, Inc. (''NYSE''), then the primary market for such security would be the NYSE, and if a security is traded by the American Stock Exchange LLC (''Amex''), then the primary market for such security would be the Amex. If a security is traded on both the NYSE and the Amex, whichever of the two is the listing market would be considered the primary market. If a security is listed on both the NYSE and Nasdaq, the NYSE would be considered the primary market. *See* Proposed CHX Article XXA, Rule 3(b).

[17] *See* Proposed Article XXA, Rule 4(a)(1).

[18] *See* CHX Article XX, Rule 43.

[19] *See* Proposed CHX Article XXA, Rule 4(b).

[20] *See* Notice, *supra* note 4.

[21] The only exceptions to this price/time priority matching would occur when certain ''cross'' and ''cross with size'' orders are executed. First, eligible ''cross with size'' transactions could execute at the price of orders in the electronic book, without executing those earlier-received orders. *See* Proposed CHX Article XXA, Rules 2(c)(4) and 4(d). Because this type of crossing transaction is permitted on the floor of the Exchange today, the Exchange believes it is appropriate to include this transaction type in the fully-automated electronic book. Similarly, when non-regular way cross and cross with size orders are placed in the electronic book, they would execute without regard to either the NBBO or orders for regular way settlement that could be in the electronic book. *See* Proposed CHX Article XXA, Rules 2(c)(5) and 4(d).

[22] *See* Proposed CHX Article XXA, Rule 4(c)(3).

[23] *See* Proposed CHX Article XXA, Rule 4(c)(4).

[24] *See* Proposed CHX Article XXA, Rule 4(d).

[25] *See* Proposed CHX Article XXA, Rule 8. The Exchange stated that it believes that this requirement for clearing the electronic book is consistent with the Exchange's current requirement that floor brokers or market makers clear the specialist's post in securities before sending orders to other markets. *See* CHX Article XX, Rule 10, Interpretation and Policy .02.

[26] *See* Proposed CHX Article XXA, Rule 5.

[27] *See* Proposed CHX Article XXA, Rule 7.

[28] *See* Proposed CHX Article XXA, Rule 6(b).

suspension or termination of their registrations, where appropriate.[29]

Additional changes to rules. Because this proposal is designed to replace the Exchange's existing cabinet security and lead market maker systems, the proposed rule change, as amended, also contains changes to various rules associated with those trading systems.[30]

III. Discussion

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[31] In particular, the Commission finds that the proposed rule change, as amended, is consistent with Section 6(b)(5) of the Act[32] in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The proposal would replace the Exchange's current manual procedures used to trade securities that are not assigned to a specialist with a fully-automated electronic book that would display and match eligible limit orders in these securities, without the participation of a specialist or lead market maker. The Commission believes that this new automatic execution system should provide investors with a more efficient mechanism by which to immediately access and trade such securities. Moreover, the Commission finds that the automated display of orders and transactions will help to perfect the mechanism of a free and open market by automatically handling orders in a fair and reasonable manner and by increasing the transparency of orders and transactions in these securities on the Exchange.[33]

As noted by the Exchange, all eligible orders in the electronic book would be round-lot limit orders, good for the day on which they are submitted and would be automatically cancelled at the end of each day's trading session. Except for certain cross orders, the Exchange proposes that all of the orders would be for regular way settlement and automatically matched against each other in price and time priority in the electronic book. Cross and cross with size orders for non-regular way settlement would also be permitted. These orders would execute automatically without regard to either the NBBO or orders for regular way settlement. The Exchange represented that this is consistent with how these types of crossing transactions are handled on the Exchange's floor today. Accordingly, the Commission believes that it is appropriate to include this transaction type in the electronic book as well.

In addition, the proposed rule change would permit CHX participants to seek registration as market makers in one or more of the securities traded in the electronic book. Under the proposal, a market maker would be required to maintain a continuous two-sided market in each security in which he or she is registered, and to engage, to a reasonable degree under existing circumstances, in a course of dealing in the securities in which he or she is registered that is reasonably calculated to contribute to the maintenance of a fair and orderly market. Proposed CHX Article XXA, Rule 6(c) also states that market makers would be considered dealers on the Exchange for purposes of the Act and the rules and regulations thereunder. Because market makers receive certain benefits for carrying out their duties, the Commission believes that they should have an affirmative obligation to hold themselves out as willing to buy and sell securities for their own account on a regular or continuous basis to justify this favorable treatment. In this regard, proposed CHX Article XXA, Rule 6(b) would impose such affirmative obligations on market makers for securities traded in the electronic book.

Furthermore, the Commission believes that the proposed rules provide a reasonable method by which all CHX participants could have access to the electronic book and route orders. Orders would be sent to the electronic book through the Exchange's MAX system or through any other communications lines approved by the Exchange for the delivery of orders by Exchange participants; ITS commitments would be sent to the electronic book through the ITS system; and NASD market participants would have direct telephone access to the supervisory center for the electronic book to enter orders in Nasdaq/NM securities. Furthermore, except for cross and cross-with-size orders, all orders received by the electronic book would be ranked according to their price and time of receipt, and would be displayed to the public when they constitute the BBO in the electronic book for a security through the CTA/CQ Plan for listed securities, and through the OTC/UTP Plan for Nasdaq/NM securities. The Commission believes that these proposed rules provide a reasonable process by which market participants would access and participate in the electronic book and will increase the efficiency of the Exchange's routing and display of eligible orders in the electronic book.

Furthermore, the Commission believes that the Exchange's proposal to automatically cancel and not accept any order in listed securities whose execution would cause the improper trade-through of another ITS market or that improperly locks or crosses another ITS market, any inbound order in Nasdaq/NM securities that improperly locks or crosses the NBBO, or any orders during a trading halt of the particular security, will protect investors and promote the fair and orderly operation of the markets.

In addition, the Commission believes it is appropriate for the Exchange to codify in its rules the method in which erroneous transactions in the electronic book could be handled. The Exchange's proposal would allow participants making a demonstrable error to agree to cancel and unwind the transaction, subject to the Exchange's approval. The Exchange also sets forth formal procedures in proposed CHX Article XXA, Rule 7 regarding the Exchange's review of clearly erroneous transactions, and the specific means for market participants to appeal decisions made by Exchange officials. The Commission believes that the proposed rules are consistent with the Act and provide for a fair, transparent, and reasonable process in which CHX participants can correct erroneous transactions in the electronic book.

[29] *See* Proposed CHX Article XXA, Rule 6(a) and (d).

[30] *See* proposed changes to CHX Article XII, Rule 9 (deleting the cabinet securities rule from the Minor Rule Violation Plan (''MRVP'')); CHX Article XX, Rule 11 (deleting the cabinet securities rule); CHX Article XXVIII, Rule 6 (deleting the rule permitting the Board of Governors to place securities in the cabinet); CHX Article XXXIV, Rule 3 (deleting the interpretation that creates the lead market maker program); and Participant Fees and Credits (deleting the lead market maker credits and the recommended MRVP fines for violations of the cabinet system rule).

[31] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[32] 15 U.S.C. 78f(b)(5).

[33] The Commission notes that, while it believes that the proposed rule change, as amended, is consistent with the requirements of the Act, the Commission is not making a determination that the Exchange's automatic execution capabilities would satisfy the ''automated trading center'' definition in Rule 600(b)(4) of Regulation NMS. *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005). The Commission also notes that the Exchange may need to amend its trading rules prior to the applicable effective dates of Regulation NMS.

Application of ''Effect v. Execute'' Exemption from Section 11(a) of the Act

Section 11(a) of the Act [34] prohibits a member [35] of a national securities exchange from effecting transactions on that exchange for its own account, the account of an associated person, or an account over which it or its associated person exercises discretion (collectively, ''covered accounts'') unless an exception applies. In addition, Rule 11a2–2(T) [36] under the Act, known as the ''effect versus execute'' rule, provides exchange members with an exemption from the Section 11(a) prohibition. Rule 11a2–2(T) permits an exchange member, subject to certain conditions, to effect transactions for covered accounts by arranging for an unaffiliated member to execute the transactions on the exchange. To comply with Rule 11a2–2(T)'s conditions, a member (a) must transmit the order from off the exchange floor; (b) may not participate in the execution of the transaction once it has been transmitted to the member performing the execution; (c) may not be affiliated with the executing member; and (d) with respect to an account over which the member has investment discretion, neither the member nor its associated person may retain any compensation in the connection with effecting the transaction except as provided in the Rule.

In a letter to the Commission,[37] the Exchange represented that transactions effected in the electronic book meet the requirements of Rule 11a2–2(T). Based on these representations, the Commission finds that the electronic book satisfies the four conditions of Rule 11a2–2(T).

Specifically, orders would be sent to the electronic book through the Exchange's MAX® system or through any other communications lines approved by the Exchange for the delivery of orders by Exchange members. In the context of other automated trading systems, the Commission has found that the off-floor transmission requirement is met if a covered account order is transmitted from a remote location directly to an exchange's floor by electronic means.[38] The Exchange, however, in its letter stated that it proposes that its floor members be able to use automated means while on the physical floor to transmit orders for their own account into the electronic book. The Commission has stated that the off-floor transmission requirement may be met when an order is sent from one trading floor of an exchange to another, separate trading floor of the same exchange.[39] On the basis of the Exchange's representations, the Commission believes that orders sent, by electronic means, from the Exchange's trading floor may be considered to be sent from ''off-floor'' for purposes of the CHX electronic book. Specifically, the Commission believes that because the securities traded on the electronic book are not traded on the CHX's physical floor, the electronic book is essentially a different, separate ''trading floor.'' The Commission notes that CHX floor members will not have a time/place advantage with regard to the securities traded in the electronic book. Specifically, orders transmitted from the Exchange's trading floor will not be processed any more quickly by the electronic book than those orders received from off the physical floor. In addition, floor members will see information about orders that are at the top of the electronic book at the same time as the public. Specifically, floor brokers will receive this information from the securities information processor that disseminates it to the public. Thus, based on these facts, the Commission believes the off-floor transmission requirement is satisfied in this case.

Second, the rule requires that the member not participate in the execution of its order. Exchange represented that its members relinquish control of orders after they are submitted to the electronic book and noted that the members do not receive special or unique trading advantages.[40] Third, although Rule 11a2–2(T) contemplates having an order executed by an exchange member who is unaffiliated with the member initiating the order, the Commission recognizes that the requirement is satisfied when automated exchange facilities are used.[41] Finally, the Exchange represents that members that rely on Rule 11a2–2(T) for a managed account transaction must comply with the limitations on compensation set forth in the rule.

Accelerated Approval of Amendment No. 2

The Commission finds good cause to approve Amendment No. 2 to the proposed rule change, as amended, prior to the thirtieth day after the amendment is published for comment in the **Federal Register** pursuant to Section 19(b)(2) of the Act.[42] Amendment No. 2 clarifies how orders

[34] 15 U.S.C. 78k(a).

[35] In connection with the Exchange's demutualization, the Exchange modified its rules to call its members ''participants'' of the Exchange. *See* Securities Exchange Act Release No. 51149 (February 8, 2005), 70 FR 7531 (February 14, 2005). The Exchange's participants are considered members of the Exchange for purposes of the Act. *See* CHX Article I, Rule 1(l).

[36] 17 CFR 240.11a2–2(T).

[37] *See* Letter from Ellen J. Neely, Senior Vice President and General Counsel, CHX, to Katherine A. England, Assistant Director, Division, Commission, dated May 10, 2005.

[38] *See, e.g.*, Securities Exchange Act Release Nos. 49066 (January 13, 2004), 69 FR 2773 (January 20, 2004) (order approving the Boston Options Exchange as an options trading facility of the Boston Stock Exchange); 29237 (May 24, 1991), 56 FR 24853 (May 31, 1991) (regarding New York Stock Exchange's (''NYSE'') Off-Hours Trading Facility); 15533 (January 29, 1979), 44 FR 6084 (January 31, 1979) (regarding the Amex Post Execution Reporting System, the Amex Switching System, the Intermarket Trading System, the Multiple Dealer Trading Facility of the Cincinnati Stock Exchange, the Pacific Exchange's (''PCX'') Communications and Execution System, and the Philadelphia Stock Exchange's (''Phlx'') Automated Communications and Execution System (''1979 Release'')); and 14563 (March 14, 1978), 43 FR 11542 (March 17, 1978) (regarding the NYSE's Designated Order Turnaround System). *See also* Letter from Paula R. Jenson, Deputy Chief Counsel, Division, Commission, to Angelo Evangelou, Senior Attorney, Chicago Board Options Exchange (''CBOE''), dated March 31, 2003 (regarding CBOE's CBOEdirect system (''CBOEdirect Letter'')); Letter from Paula R. Jenson, Deputy Chief Counsel, Division, Commission, to Jeffrey P. Burns, Assistant General Counsel, Amex, dated July 9, 2002 (regarding Amex's Auto-Ex system for options); Letter from Paula R. Jenson, Deputy Chief Counsel, Division, Commission, to Richard S. Rudolph, Counsel, Phlx, dated April 15, 2002 (regarding Phlx's AUTOM System and its automatic execution feature AUTO–X); Letter from Paula R. Jenson, Deputy Chief Counsel, Division, Commission, to Kathryn L. Beck, Senior Vice President, Special Counsel and Antitrust Compliance Officer, PCX, dated October 25, 2001 (regarding Archipelago Exchange (''ArcaEx'') (''ArcaEx Letter'')); Letter from Brandon Becker, Director, Division, Commission, to George T. Simon, Foley & Lardner, dated November 30, 1994 (regarding Chicago Match (''Chicago Match Letter'')).

[39] *See* Letter from Richard A. Steinwurtzel, Attorney, Office of Chief Counsel, Division, Commission, to Philip J. Lo Bue, Senior Vice President, PCX, dated December 22, 1978.

[40] *See* Securities Exchange Act Release No. 44983 (October 25, 2001), 66 FR 55225 (November 1, 2001) (Order approving ArcaEx as the equities trading facility of PCX Equities Inc.); 1979 Release, *supra* note 38, at 6086 note 25. *See* also CBOEdirect Letter, *supra* note 38; Letter from Larry E. Bergmann, Senior Associate Director, Division, Commission, to Edith Hallahan, Associate General Counsel, Phlx, dated March 24, 1999 (regarding Phlx's VWAP Trading System); Letter from Catherine McGuire, Chief Counsel, Division, Commission, to David E. Rosedahl, PCX, dated November 30, 1998 (regarding Optimark); and Chicago Match Letter, *supra* note 38.

[41] In considering the operation of automated execution systems operated by an exchange, the Commission noted that while there is no independent executing exchange member, the execution of an order is automatic once it has been transmitted into the systems. Because the design of these systems ensures that members do not possess any special or unique trading advantages in handling their orders after transmitting them to the exchange, the Commission has stated that executions obtained through these systems satisfy the independent execution requirement of Rule 11a2–2(T). *See* 1979 Release, *supra* note 38, at 6086 note 25.

[42] 15 U.S.C. 78s(b)(2).

in the electronic book would be handled during a trading halt, that orders that improperly lock or cross other markets or that would trade through another ITS market would be cancelled, and the obligations of a market maker in the electronic book.[43] Amendment No. 2 also clarifies the definitions of cross and cross with size orders,[44] incorporates new provisions relating to orders for non-regular way settlement and to a floor member's responsibility to clear the electronic book before sending orders to other markets,[45] and updates the proposed rule change to reflect the Exchange's recent demutualization.

The Commission believes that the proposed changes in Amendment No. 2 provide a clearer understanding of the operation of the electronic book and raise no new issues of regulatory concern. In addition, the Commission notes that the requirement for clearing the electronic book is consistent with the Exchange's current requirement that floor brokers or market makers clear the specialist's post in securities before sending orders to other markets.[46] For these reasons, the Commission believes that good cause exists to accelerate approval of Amendment No. 2.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 2, including whether Amendment No. 2 is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–CHX–2004–11 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549–9303.

All submissions should refer to File Number SR–CHX–2004–11. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 100 F Street, NE, Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the CHX. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CHX–2004–11 and should be submitted on or before August 19, 2005.

V. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change, as amended, is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with Section 6(b)(5) of the Act.[47]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[48] that the proposed rule change (SR–CHX–2004–11) and Amendment No. 1 thereto are approved, and that Amendment No. 2 thereto is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[49]

Margaret H. McFarland,

Deputy Secretary.

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[43] *See* changes to rule text proposed in CHX Article XXA, Rules 2(e), 2(f), 3(d), 4(c)(3), and 6(b).

[44] *See* changes to rule text proposed in CHX Article XXA, Rules 2(c)(3) and (4).

[45] *See* Proposed CHX Article XXA, Rules 2(c)(5) and 8.

[46] *See* CHX Article XX, Rule 10, Interpretation and Policy .02.

[47] 15 U.S.C. 78f(b)(5).

[48] 15 U.S.C. 78s(b)(2).

[49] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52112; File No. SR–NASD–2005–060]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change To Create the ModelView Entitlement, an Historical Data Product Designed To Provide the Aggregate Amount of Both Displayed and Reserve Size Liquidity in the Nasdaq Market Center at Each Price Level

July 22, 2005.

On May 10, 2005, the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to create the ModelView entitlement, an historical data product designed to provide the aggregate amount of both displayed and reserve size liquidity in the Nasdaq Market Center at each price level. The proposed rule change was published for comment in the **Federal Register** on June 21, 2005.[3] The Commission received no comments on the proposal. This order approves the proposed rule change.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association,[4] the requirements of Section 15A of the Act,[5] in general, and Section 15A(b)(5) of the Act,[6] in particular, which requires, among other things, that NASD's rules provide for the equitable allocation of reasonable dues, fees, and other charges among persons using any facility or system which NASD operates or controls. The Commission believes the proposed rule change may encourage the broader redistribution on the Nasdaq Market Center depth of book order information, thus improving transparency and thereby benefiting the investing public.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 51851 (June 14, 2005), 70 FR 35752.

[4] 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).

[5] 15 U.S.C. 78*o*–3.

[6] 15 U.S.C. 78*o*–3(b)(5).

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[7] that the proposed rule change (File No. SR–NASD–2005–060) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–4025 Filed 7–28–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52119; File No. SR–NASD–2005–089]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto Relating to NASD's Direct Authority for the Activities Related to or in Support of Trading in Over-the-Counter Equity Securities

July 25, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 19, 2005, the National Association of Securities Dealers, Inc. (''NASD'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. On July 22, 2005, the NASD filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is proposing to amend NASD's Plan of Allocation and Delegation of Functions by the NASD to Subsidiaries (''Delegation Plan'') and certain NASD rules to reflect the NASD's direct authority for the activities related to or in support of trading in over-the-counter (''OTC'') equity securities,[4] including, but not limited to, the OTC Bulletin Board (''OTCBB''), rather than the current delegation of such authority to The Nasdaq Stock Market, Inc. (''Nasdaq'').

Below is the text of the proposed rule change, as amended. Proposed new language is in italics; proposed deletions are in brackets.

* * * * *

PLAN OF ALLOCATION AND DELEGATION OF FUNCTIONS BY NASD TO SUBSIDIARIES

I. NASD, Inc.

The NASD, Inc. (referenced as ''NASD''), the Registered Section 15A Association, is the parent company of the [wholly-owned] Subsidiaries NASD Regulation, Inc. (referenced individually as ''NASD Regulation''), The Nasdaq Stock Market, Inc. (referenced individually as ''Nasdaq''), and NASD Dispute Resolution, Inc. (referenced individually as ''NASD Dispute Resolution'') (referenced collectively as the ''Subsidiaries''). The term ''Association'' shall refer to the NASD and the Subsidiaries collectively.

A. [Governors, Directors and Committee Members]*Other Defined Terms*—The terms ''Industry Governors,'' ''Non-Industry Governors,'' ''Public Governors,'' ''Industry Directors,'' ''Non-Industry Directors,'' ''Public Directors,'' ''Industry committee members,'' ''Non-Industry committee members,'' and ''Public committee members,'' as used herein, shall have the meanings set forth in the By-Laws of the NASD, NASD Regulation and Nasdaq, as applicable. *For purposes of Section III herein, the term ''other markets or systems'' does not include markets or systems relating to the trading of OTC Equity Securities as defined in the Rule 6600 Series, including, but not limited to, OTC Bulletin Board securities.*

B. through E. No change.

II. NASD Regulation, Inc.

A. Delegation of Functions and Authority

1. Subject to Section I.B.11, the NASD hereby delegates to NASD Regulation and NASD Regulation assumes the following responsibilities and functions as a registered securities association:

a. through s. No change.

t. To develop and adopt rule changes to establish trading practices with respect to OTC Equity Securities, as defined in the Rule 6600 Series, including, but not limited to, OTC Bulletin Board securities.

B. No change.

C. Supplemental Delegation Regarding Committees

1. No change.

2. [Operations] *Uniform Practice Code* Committee

a. The [Operations] *Uniform Practice Code* Committee shall have the following functions:

i. through iii. No change.

b. The NASD Regulation Board shall appoint the [Operations] *Uniform Practice Code* Committee by resolution. The [Operations] *Uniform Practice Code* Committee shall have not more than 50 percent of its members directly engaged in market-making activity or employed by a member firm whose revenues from market-making activity exceed ten percent of its total revenues.

III. Nasdaq

A. Delegation of Functions and Authority

1. Subject to Section I.B.11., the NASD hereby delegates to Nasdaq and Nasdaq assumes the following responsibilities and functions as a registered securities association:

a. To operate The Nasdaq Stock Market, automated systems supporting The Nasdaq Stock Market, and other markets or systems[for non-Nasdaq securities].

b. and c. No change.

d. To develop and adopt rule changes (i) applicable to the collection, processing, and dissemination of quotation and transaction information for securities traded on The Nasdaq Stock Market, on other markets operated by The Nasdaq Stock Market, *and* in the third market for securities listed on a registered exchange, [and in the over-the-counter market,](ii) for Nasdaq-operated trading systems for these securities, and (iii) establishing trading practices with respect to these securities.

e. through o. No change.

2. No change.

B. and C. No change.

IV. and V. No change.

* * * * *

6545. Trading and Quotation Halt in OTCBB-Eligible Securities

(a) Authority for Initiating a Trading and Quotation Halt

In circumstances in which it is necessary to protect investors and the public interest, [Nasdaq]*NASD* may direct members, pursuant to the procedures set forth in paragraph (b), to halt trading and quotations in the over-the-counter (''OTC'') market of a

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[7] 15 U.S.C. 78s(b)(2).

[8] 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, which replaced the original filing in its entirety, proposed to revise NASD Rule 6620(f)(1) to reflect the changes proposed to NASD Rule 11890 and made other minor and technical changes to the filing.

[4] The term ''OTC equity securities'' herein refers to OTC Equity Securities as defined in the Rule 6600 Series, including, but not limited to, OTC Bulletin Board securities.

security or an American Depository Receipt (''ADR'') that is included in the OTC Bulletin Board (''OTCBB'') if:

(1) the OTCBB security or the security underlying the OTCBB ADR is listed on or registered with a foreign securities exchange or market, and the foreign securities exchange, market, or regulatory authority overseeing such issuer, exchange, or market, halts trading in such security for regulatory reasons because of public interest concerns (''Foreign Regulatory Halt''); provided, however, that [Nasdaq]*NASD* will not impose a trading and quotation halt if the Foreign Regulatory Halt was imposed solely for material news, a regulatory filing deficiency, or operational reasons; or

(2) through (3) No change.

(b) Procedure for Initiating a Trading and Quotation Halt

(1) When a halt is initiated under subparagraph (a)(1) of this rule, upon receipt of information from a foreign securities exchange or market on which the OTCBB security or the security underlying the OTCBB ADR is listed or registered, or from a regulatory authority overseeing such issuer, exchange, or market, [Nasdaq]*NASD* will promptly evaluate the information and determine whether a trading and quotation halt in the OTCBB security is appropriate.

(2) Should [Nasdaq]*NASD* determine that a basis exists under this rule for initiating a trading and quotation halt, the commencement of the trading and quotation halt will be effective simultaneous with the issuance of appropriate public notice.

(3) Trading and quotations in the OTC market may resume when [Nasdaq]*NASD* determines that the basis for the halt no longer exists, or when five business days have elapsed from the date [Nasdaq]*NASD* initiated the trading and quotation halt in the security, whichever occurs first. [Nasdaq]*NASD* shall disseminate appropriate public notice that the trading and quotation halt is no longer in effect.

(c) No change.

* * * * *

6620. Transaction Reporting

(a) through (e) No change.

(f) Reporting Cancelled Trades

(1) Obligation and Party Responsible for Reporting Cancelled Trades

With the exception of trades cancelled [by Nasdaq staff] in accordance with Rule 11890, members shall report to the Nasdaq Market Center the cancellation of any trade previously submitted to the Nasdaq Market Center. The member responsible under Rule 6620 for submitting the original trade report shall submit the cancellation report in accordance with the procedures set forth in paragraph (f)(2). For trades executed through a Nasdaq system that automatically reports trades to the Nasdaq Market Center, the member that would have been required by Rule 6620 to report the trade (but for the trade being reported automatically by the Nasdaq system) shall submit the cancellation report in accordance with the procedures set forth in paragraph (f)(2).

(2) No change.

* * * * *

7010. System Services

(a) through (o) No change.

(p) Historical Research and Administrative Reports

(1) and (2) No change.

(3) The charge to be paid by the purchaser of an Historical Research Report regarding *an* OTC Bulletin Board security or other OTC security through the OTCBB.com website shall be determined in accordance with the following schedule:

A. No change.

B. No change.

C. [Nasdaq] *NASD* may, in its discretion, choose to make a report that purchasers wish to obtain every trading day available on a subscription discount basis. In such cases, the price for a subscription to receive a report every trading day in a month shall be the applicable rate to receive the report for a day times 20; the price for a subscription to receive the report for every trading day in a quarter shall be the applicable rate to receive the report every day times 60; and the price for a subscription to receive a report every trading day in a year shall be the applicable rate to receive the report for a day times 240.

D. No change

(4) No change.

(q) through (v) No change.

* * * * *

11120. Definitions

(a) Committee

The term ''Committee'' as used in this Code, unless the context otherwise requires, shall mean the Committee delegated the authority to administer this Code by the Board of Governors.*

(b) through (g) No change.

* * * * *

11890. Clearly Erroneous Transactions

(a) No change.

(b) Procedures for Reviewing Transactions on *NASD's or* Nasdaq's Own Motion

(1) In the event of (i) a disruption or malfunction in the use or operation of any quotation, execution, communication, or trade reporting system owned or operated by Nasdaq and approved by the Commission, or (ii) extraordinary market conditions or other circumstances in which the nullification or modification of transactions may be necessary for the maintenance of a fair and orderly market or the protection of investors and the public interest, the President of Nasdaq or any Executive Vice President designated by the President may, on his or her own motion, review any transaction *in Nasdaq or exchange-listed securities* arising out of or reported through any such quotation, execution, communication, or trade reporting system, including transactions entered into by a member of a UTP Exchange through the use or operation of such a system, but excluding transactions that are entered into through, or reported to, a UTP Exchange. A Nasdaq officer acting pursuant to this subsection may declare any such transaction null and void or modify the terms of any such transaction if the officer determines that (i) the transaction is clearly erroneous, or (ii) such actions are necessary for the maintenance of a fair and orderly market or the protection of investors and the public interest; provided, however, that, in the absence of extraordinary circumstances, the officer must take action pursuant to this subsection within thirty (30) minutes of detection of the transaction, but in no event later than 3 p.m., Eastern Time, on the next trading day following the date of the trade at issue.

(2) In the event of (i) a disruption or malfunction in the use or operation of any quotation, communication, or trade reporting system owned or operated by NASD or its subsidiaries and approved by the Commission, or (ii) extraordinary market conditions in which the nullification or modification of transactions may be necessary for the maintenance of a fair and orderly market or the protection of investors and the public interest, an Executive Vice President of NASD's Market Regulation Department or an Executive Vice President of NASD's Transparency Services Department may, on his or her own motion, review any transaction in an OTC equity security, as defined in Rule 6610, arising out of or reported through any such quotation, communication, or trade reporting system. An NASD officer acting

* The Board of Governors has so designated the [Association's Operations] *NASD's Uniform Practice Code* Committee.

pursuant to this subsection may declare any such transaction null and void or modify the terms of any such transaction if the officer determines that (i) the transaction is clearly erroneous, or (ii) such actions are necessary for the maintenance of a fair and orderly market or the protection of investors and the public interest; provided, however, that, in the absence of extraordinary circumstances, the officer must take action pursuant to this subsection within thirty (30) minutes of detection of the transaction, but in no event later than 3 p.m., Eastern Time, on the next trading day following the date of the trade at issue.

(c) Review by the Market Operations Review Committee (''MORC'') *or the Uniform Practice Code (''UPC'') Committee*

(1) A member, member of a UTP Exchange, or person associated with any such member may appeal a determination made under subsection (a) to the MORC. A member, member of a UTP Exchange, or person associated with any such member may appeal a determination made under subsection (b)*(1)* to the MORC, *or a determination made under subsection (b)(2) to the UPC Committee,* unless the officer making the determination also determines that the number of the affected transactions is such that immediate finality is necessary to maintain a fair and orderly market and to protect investors and the public interest. An appeal must be made in writing, and must be received by Nasdaq *or NASD, as applicable,* within thirty (30) minutes after the person making the appeal is given the notification of the determination being appealed, except that if Nasdaq *or NASD* notifies the parties of action taken pursuant to paragraph (b) after 4 p.m., the appeal must be received by [Nasdaq by] 9:30 a.m. the next trading day. Once a written appeal has been received, the counterparty to the trade will be notified of the appeal and both parties shall be able to submit any additional supporting written information up until the time the appeal is considered by the *appropriate* Committee. Either party to a disputed trade may request the written information provided by the other party during the appeal process. An appeal [to the Committee] shall not operate as a stay of the determination being appealed. Once a party has appealed a determination to the *appropriate* Committee, the determination shall be reviewed and a decision rendered, unless both parties to the transaction agree to withdraw the appeal prior to the time a decision is rendered [by the Committee]. Upon consideration of the record, and after such hearings as it may in its discretion order, the *MORC or the UPC* Committee, pursuant to the standards set forth in this section, shall affirm, modify, reverse, or remand the determination.

(2) The decision of [the] *a* Committee pursuant to an appeal, or a determination by a Nasdaq *or NASD* officer that is not appealed, shall be final and binding upon all parties and shall constitute final [Association] action on the matter in issue. Any determination by a Nasdaq *or NASD* officer pursuant to paragraph (a) or (b) or any decision by [the] a Committee pursuant to paragraph (c)(1) shall be rendered without prejudice as to the rights of the parties to the transaction to submit their dispute to arbitration.

(d) Communications

(1) All materials submitted [to Nasdaq or the MORC] pursuant to this Rule shall be submitted via facsimile machine and within the time parameters specified herein; provided, however, that if requested, Nasdaq *or NASD* staff may authorize submission of material via electronic mail on a case-by-case basis. Materials shall be deemed received at the time indicated by the equipment (*i.e.,* facsimile machine or computer) receiving the materials. Nasdaq *and NASD,* in [its] *their* sole and absolute discretion, reserve[s] the right to reject or accept any material that is not received within the time parameters specified herein.

(2) Nasdaq *or NASD* shall provide affected parties with prompt notice of determinations under this Rule via facsimile machine, electronic mail, or telephone (including voicemail); provided, however, that if an officer nullifies or modifies a large number of transactions pursuant to subsection (b), Nasdaq or NASD may instead provide notice to parties via the Nasdaq Workstation II Service, a press release, or any other method reasonably expected to provide rapid notice to many market participants.

IM–11890–1. Refusal To Abide by Rulings [of a Nasdaq Officer or the MORC]

It shall be considered conduct inconsistent with just and equitable principles of trade for any member to refuse to take any action that is necessary to effectuate a final decision of a Nasdaq *or NASD* officer or the MORC *or the UPC Committee* under Rule 11890.

IM–11890–2. Review by Panels of the MORC *or the UPC Committee*

For purposes of Rule 11890 and other NASD rules that permit review of Nasdaq *or NASD* decisions by the MORC *or the UPC Committee, respectively,* a decision of the MORC *or the UPC Committee* may be rendered by a panel of three or more members of [the MORC] *that Committee,* provided that no more than 50 percent of the members of any panel are directly engaged in market making activity or employed by a member firm whose revenues from market making activity exceed ten percent of its total revenues.

* * * * *

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 NASD included statements concerning the purpose of and basis for the proposed rule change, as amended, and discussed any comments it received on the proposed rule change, as amended. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Pursuant to the Delegation Plan, activities related to or in support of the trading in OTC equity securities, including, but not limited to, operation of the OTCBB5 [5] (collectively referred to herein as ''OTC equity operations''), have been delegated to Nasdaq. In this context, OTC equity operations includes services such as trade reporting, comparison, quote collection and dissemination, as applicable, and the related rulemaking functions in this area. The NASD is proposing to assume direct authority for OTC equities operations rather than delegate it to Nasdaq and delegate to NASD Regulation rulemaking authority related to trading practices for OTC equity securities. The NASD intends to contract with Nasdaq to have it continue

[5] The OTCBB provides an electronic quotation medium for subscribing members to enter, update, and display quotations in individual securities on a real-time basis. Such quotation entries may consist of a priced bid and/or offer; an unpriced indication of interest; or a bid/offer accompanied by a modifier to reflect unsolicited customer interest. The OTCBB is not an issuer listing service and therefore does not maintain a relationship with quoted issuers or impose quantitive listing standards as do Nasdaq and the exchanges. To be eligible for quotation on the OTCBB, issuers must be current in their filings with the Commission or applicable regulatory authority.

to provide the OTCBB quotation and trade reporting platform and certain other services that it currently provides with respect to OTC equity operations. As a result, market makers and other users of such services will continue to access the OTCBB and other OTC equity services in the same way they do today.

In furtherance of this transition, the NASD also is proposing to: (1) Transfer trading and quotation halt authority for OTCBB-eligible securities from Nasdaq to the NASD; (2) conform the language governing reporting cancelled trades to reflect the proposed changes in NASD Rule 11890 relating to the NASD's ability to nullify or modify transactions in OTC equity securities; (3) transfer the authority to set certain fees in this area from Nasdaq to the NASD; and (4) transfer from Nasdaq to the NASD the ability to nullify or modify a transaction in an OTC equity security due to a disruption or malfunction in the use or operation of any quotation, communication, or trade reporting system or other extraordinary market conditions.

Delegation Plan Changes. The NASD will be assuming direct responsibility for OTC equity operations and is therefore proposing to delete the delegation of authority to Nasdaq of these functions and also to delegate to NASD Regulation rulemaking authority related to trading practices for OTC equity securities. Nasdaq will continue to operate the Nasdaq Stock Market and other markets or systems, as appropriate, and will maintain its delegation of authority accordingly. In addition, the NASD is proposing a technical change in the introductory language of Section I of the Delegation Plan, to delete the reference to ''wholly-owned'' subsidiaries given that Nasdaq is no longer a wholly-owned subsidiary of the NASD.

OTCBB Trading and Quotation Halts. The NASD is proposing to amend NASD Rule 6545, which governs the trading and quotation halt authority for OTCBB-eligible securities, to provide that NASD has direct responsibility for this function. NASD Rule 6545 currently provides Nasdaq with authority to impose trading and quotation halts in OTCBB-eligible securities in certain circumstances. Instead, the NASD proposes to amend NASD Rule 6545 to provide that the NASD has the authority to determine the basis for a trading and quotation halt and to resume trading after a trading and quotation halt has been initiated under the rule.

Cancelled Trades. The NASD is proposing to amend NASD Rule 6620(f), which governs the reporting of cancelled trades for OTC Equity Securities, to reflect the proposed transfer of authority to the NASD to nullify or modify transactions in OTC equity securities pursuant to NASD Rule 11890 as discussed below. Accordingly, the NASD proposes to amend Rule NASD 6620(f) to conform the language in that rule to the proposed language in NASD Rule 11890.

Charges and Fees. The NASD will be responsible for determining fees associated with OTC equity operations. With one exception noted below, the fee provisions within NASD Rule 7010 for services related to OTC equity operations do not explicitly provide the authority to set such fees to Nasdaq, so no rule changes are necessary. The one exception is NASD Rule 7010(p)(3), which governs the charges for historical research reports for OTCBB-eligible securities. As a result, the NASD is proposing to amend NASD Rule 7010(p)(3) to provide that the NASD has authority to set fees in this area. The NASD is not proposing any changes to the current fee structure associated with OTC equity operations at this time.

Clearly Erroneous Authority. The NASD is proposing to amend NASD Rule 11890 to transfer the authority to the NASD to nullify or modify transactions in OTC equity securities as may be necessary for the maintenance of a fair and orderly market or the protection of investors and the public interest. Specifically, the proposed rule change, as amended, will permit an Executive Vice President of NASD's Market Regulation Department or an Executive Vice President of NASD's Transparency Services Department to review, on his or her own motion, any transaction in an OTC equity security, as defined in NASD Rule 6610, arising out of or reported through any quotation, communication, or trade reporting system owned or operated by the NASD or its subsidiaries and approved by the Commission in the event of a disruption or malfunction in the use or operation of any such system or extraordinary market conditions. The proposed rule change, as amended, also provides for a process by which a determination under this provision may be appealed to the Uniform Practice Code (UPC) Committee, unless the officer making the determination also determines that the number of the affected transactions is such that immediate finality is necessary to maintain a fair and orderly market and to protect investors and the public interest.

The NASD intends for the proposed rule change, as amended, to become effective on September 1, 2005, assuming Commission approval prior to that date.

2. Statutory Basis

The NASD believes that the proposed rule change, as amended, is consistent with the provisions of Section 15A(b)(6) of the Act,[6] which requires, among other things, that NASD rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The NASD believes that the proposed rule change, as amended, will clarify the NASD Delegation Plan and rules to reflect the NASD's direct responsibility for OTC equity operations.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change, as amended, will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, as amended, or

B. Institute proceedings to determine whether the proposed rule change, as amended, 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

[6] 15 U.S.C. 78*o*–3(b)(6).

• Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NASD–2005–089 on the subject line.

Paper Comments

• Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number SR–NASD–2005–089. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the NASD. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASD–2005–089 and should be submitted on or before August 19, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–4062 Filed 7–28–05; 8:45 am]

BILLING CODE 8010–01–P

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52120; File No. SR–OCC–2005–10]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify Certain Procedures With Respect to the OCC's Stock Loan/Borrow Program

July 25, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on July 7, 2005, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change described in Items I, II, and III below, which items have been prepared primarily by OCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change codifies certain administrative procedures with respect to the OCC's stock loan/borrow program.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The principal purpose of the proposed rule change is to add Interpretations and Policies reflecting changes in OCC's administrative procedures intended to provide hedge clearing members with the flexibility to allocate stock loan and stock borrow positions among their OCC accounts at any time during the business day. The proposed Interpretations also codify certain existing policies with respect to OCC's Stock Loan/Hedge Program.

Clearing members participating in the stock loan program process loan and return transactions through The Depository Trust Company (''DTC'') and designate them as eligible for clearance at OCC through use of special codes. DTC transmits a file containing stock loan transaction data to OCC each business day around 3:15 p.m. A clearing member's transactions are identified only by its depository account number which is translated by OCC's systems to an OCC clearing number. After processing this data, OCC permits clearing members to access its stock loan system between about 4:00 p.m. (CT) and about 7:00 p.m. (CT) (''allocation window'') in order to allocate both existing and new positions among the clearing member's accounts. Any unallocated positions are posted to the clearing member's designated default account for this purpose.[3] Currently, clearing members are permitted to perform such allocations only with respect to accounts maintained under the OCC clearing number in which the stock loan/borrow positions were cleared.

As reflected in the proposed Interpretations and Policies to Rule 2201, OCC is changing its administrative procedures in two respects in order to address comments from clearing members. First, clearing members will now have the ability to make allocations of stock loan and stock borrow positions at any time during the day even though DTC has not yet reported the current day's transactions. Second, OCC will now permit a clearing member that is assigned more than one clearing member number to allocate stock loan and borrow positions to accounts across all of its clearing numbers.[4]

Clearing members have advised OCC that they are often aware of the specific stock loan/borrow activity taking place during the day and can predict with

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by OCC.

[3] OCC permits some clearing members to carry stock loan and stock borrow positions in a designated account on a ''margin ineligible'' basis, meaning that the positions are excluded from the calculation of the margin requirement for that account. Stock loan and stock borrow positions carried on a margin ineligible basis will neither generate or increase a margin requirement nor reduce a margin requirement.

[4] Some clearing members have more than one clearing member number as a result of having acquired other clearing members or having requested separate numbers to identify particular divisions or sets of accounts for internal purposes. In other cases, OCC may assign additional clearing member numbers to a clearing member in order to permit the clearing member to maintain additional accounts that cannot be accommodated under the same number within OCC's system.

reasonable accuracy the final loan position that will be available for allocation at the end of the day. Providing the requested functionality will enable clearing members to: (i) Perform all or a significant portion of their allocations earlier in the day, which makes it easier for OCC to begin stock loan/borrow processing at the scheduled time and (ii) apply stock loan and borrow positions to accounts maintained under other clearing numbers in order to more effectively reduce their margin requirements.

While clearing members will have the ability to review, verify, and change their allocations until a specified deadline, it is possible that the total number of loaned or borrowed shares that a clearing member has allocated may not match the clearing member's total end of day loan/borrow position in the DTC file. To address that possibility, clearing members will be required to give standing instructions specifying the order in which they prefer loaned and borrowed shares to be allocated to their accounts. In accordance with those instructions, OCC will allocate the inventory of loaned or borrowed shares to the account with the highest preference designated by the clearing member up to the number of shares that the clearing member allocated to that account. If there are remaining shares, OCC will allocate such shares to the next preferred account up to the amount allocated by the clearing member. OCC will continue this process until all shares have been allocated. Any shares in excess of the aggregate amount allocated by the clearing member will be applied to the clearing member's designated default account.

In order to process a return of fewer than all of the loaned/borrowed shares of a particular stock in the clearing member's inventory, OCC will first return shares from the least preferred account (as designated by the clearing member) up to the total amount of loaned/borrowed shares in that account. If additional shares are to be returned, OCC will return shares from the next priority account. OCC will continue this process until the entire amount of the return has been applied. Clearing members that participate on the Stock Loan Roundtable have endorsed the adoption of these allocation preference guidelines.

The Interpretations and Policies proposed to be added to Article XXI, Section 5 of OCC's By-laws merely clarifies the existing policy. A hedge clearing member is not permitted to allocate any stock loan or stock borrow position to any proprietary cross-margin account, non-proprietary cross-margin account, internal non-proprietary cross-margining account, or segregated futures accounts. Although OCC anticipates that it will propose to change this policy in the future, the existing practice will apply until appropriate regulatory approvals are obtained.

The proposed change is consistent with Section 17A of the Act [5] and the rules and regulations thereunder applicable to OCC because the changes are designed to promote the prompt and accurate clearance and settlement of transactions and to assure safeguarding of securities and funds in the custody and control of OCC. The proposed rule change is not inconsistent with the By-laws and Rules of OCC, including any rules proposed to be amended.

(B) Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change, and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(A)(iii) of the Act [6] and Rule 19b–4(f)(4) [7] thereunder because it effects a change that (i) does not adversely affect the safeguarding of securities or funds in the custody or control of the clearing agency or for which it is responsible and (ii) does not significantly affect the respective rights or obligations of the clearing agency or persons using the service. At any time within sixty days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.

[5] 15 U.S.C. 78q–1.

[6] 15 U.S.C. 78s(b)(3)(A)(iii).

[7] 17 CFR 240.19b–4(f)(4).

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*) or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–OCC–2005–10 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number SR–OCC–2005–10. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 100 F Street, NE., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of OCC and on OCC's Web site at *http://www.optionsclearing.com*. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–OCC–2005–10 and should be submitted on or before August 19, 2005.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–4064 Filed 7–28–05; 8:45 am]

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[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52103; File No. SR–PCX–2005–58]

Self-Regulatory Organizations; Pacific Exchange, Inc.; Notice of Filing of Proposed Rule Change and Amendments Nos. 1 and 2 Thereto Relating to Market Order Auction

July 21, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 22, 2005, the Pacific Exchange, Inc. (''PCX'' or ''Exchange''), through its wholly owned subsidiary PCX Equities, Inc. (''PCXE'' or the ''Corporation''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by PCX. On June 27, 2005, the Exchange amended the proposed rule change (''Amendment No. 1'').[3] On July 8, 2005, the Exchange further amended the proposed rule change (''Amendment No. 2'').[4] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its rules governing the Archipelago Exchange (''ArcaEx''), the equities trading facility of PCXE. With this filing, the Exchange proposes to modify its Market Order Auction. The text of the proposed rule change, as amended, is available on the PCX Web site (*http://www.pacificex.com*), at the PCX's Office of the Secretary and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change, as amended. 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

As part of its continuing efforts to enhance participation on the ArcaEx facility, the Exchange is proposing to modify its Market Order Auction procedures. In conjunction with these modifications, the Exchange seeks to clarify the existing Indicative Match Price definition as defined in PCXE Rule 1.1(r) and also modify the Market Order Auction rules as described in PCXE Rule 7.35. Further, the Exchange proposes to implement price collars in order to improve the Market Order Auction pricing mechanism.

Indicative Match Price Changes

Currently, PCXE Rule 1.1(r) describes the Indicative Match Price which generally determines the price at which orders eligible for execution in the ArcaEx auctions[5] are executed. This proposal seeks to clarify the existing Indicative Match Price functionality by indicating that the Indicative Match Price is the *best* price (that which is closest to the NBBO) at which the maximum volume of shares are executable in the respective auction.

In addition, the Exchange seeks to implement a price collar proposal based on a similar standard currently in place for ArcaEx's Closing Auction which was filed on an immediately effective basis.[6] To improve the pricing mechanism, ArcaEx proposes to implement price collars that would limit the price at which the Indicative Match Price could be established. The price collars would be determined by PCX and communicated to ETP Holders via the ArcaEx Web site. Initially, these price collar thresholds would be consistent with the PCXE Demonstrable Erroneous Execution Policy.[7] That is, generally the Indicative Match Price would not be permitted to be greater than $1.00 or 10% away from the consolidated last sale price. PCXE would use the pre-established price collars to limit the Market Order Auction Indicative Match Price. PCXE would not have any discretion to modify the auction process and the calculation of the Indicative Match Price other than to change the threshold parameters with prior written notice to ETP Holders.

Following is an example of how the Market Order Auction price collars would function for exchange-listed securities for which the Corporation is the primary market and all exchange-listed exchange traded funds:

Consolidated last sale price: 12.00
ArcaEx Orders:
Buy 50,000 Market Order
Sell 30,000 Auction-Only Limit Order @ 12.50
Sell 20,000 Limit Order @ 13.01

Market Order Auction results: Indicative Match Price = 12.50; Matched Volume = 30,000; Total Imbalance = 20,000. The 20,000 limit sell order at 13.01 is outside of the price collar and will not be used to determine the Indicative Match Price.

Market Order Auction Changes

This proposal also seeks to modify the Market Order Auction functionality and PCXE Rule 7.35(c) such that the functionality would differ depending on the type of security. There would be three categories of securities applicable to this proposal: (1) Exchange-listed securities, excluding: (i) exchange-listed securities for which the Corporation is the primary market; and (ii) all exchange-listed exchange traded funds; (2) exchange-listed securities for which the Corporation is the primary market and all exchange-listed exchange-traded funds; and (3) Nasdaq-listed securities.[8]

With respect to category (1) described above, currently the Exchange conducts a Market Order Auction of such securities which is based upon the types of orders eligible for execution where the auction price could be based on the Indicative Match Price or the midpoint of the first uncrossed NBBO after 6:30 a.m. (Pacific Time). The Exchange proposes to modify this functionality and would not conduct a Market Order Auction, but rather would route all market orders to the primary market until the first opening print on the primary market. All limit orders and

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the Exchange made clarifying changes to the definition of Indicative Match Price and the purpose section and rule text describing the market auction procedure.

[4] In Amendment No. 2, the Exchange made clarifying changes to the purpose section and the rule text describing the market auction procedure.

[5] *See* PCXE Rule 7.35 for a description of the Opening Auction, Market Order Auction, Closing Auction, and Trading Halt Auction.

[6] *See* Securities Exchange Act Release No. 50108 (July 28, 2004); 69 FR 47195 (August 4, 2004) (SR–PCX–2004–66). The Commission clarified this sentence to indicate that this standard was filed on an immediately effective basis. Telephone Conference among Bridget Farrell, Director, Strategy, ArcaEx and Ann Leddy, Special Counsel, Division of Market Regulation (''Division''), Commission and Mitra Mehr, Attorney, Division, Commission on July 15, 2005.

[7] *See* ArcaEx Web site (*http://www.arcaex.com*), Orders and Execution policy, Erroneous Execution Policy. Any changes to the thresholds of the price collars will be communicated to ETP Holders with reasonable notice prior to the Market Order Auction.

[8] This category includes the QQQQ, which is a Nasdaq-listed exchange traded fund.

any market orders after the first primary opening print would be processed pursuant to PCXE Rule 7.37.[9]

Regarding category (2) described above, currently the Exchange conducts a Market Order Auction of such securities which is based upon the types of orders eligible for execution where the auction price could be based on the Indicative Match Price or the midpoint of the first uncrossed NBBO after 6:30 a.m. (Pacific Time). The Exchange proposes to maintain its existing Market Order Auction functionality for exchange-listed securities for which the Corporation is the primary market and all exchange-listed exchange-traded funds. In this filing, the Exchange seeks to clarify the existing rule language associated with the Market Order Auction. Such changes do not result in any functionality changes, but rather would refine the rule text to be clearer and more consistent with existing functionality. Specifically, the Exchange proposes to clarify PCXE Rule 7.35(c)(3) which describes the determination of the Market Order Auction Price. The clarifying changes would more clearly describe the pricing process as follows:

(1) In the instance in which there are limit orders eligible for execution in the Market Order Auction, the Indicative Match Price would determine the auction price.

(2) In the instance in which there are no limit orders eligible for execution in the Market Order Auction:

(i) In the case of exchange-listed exchange traded funds for which the Corporation is not the primary market, as many buy market orders and sell market orders as possible would be matched and executed at the midpoint of the first uncrossed NBBO after 6:30 a.m. (Pacific Time), once available; or

(ii) In the case of exchange-listed securities, including exchange-listed exchange traded funds, for which the Corporation is the primary market, market orders would be rejected.

The Market Orders that are eligible for, but not executed in the Market Order Auction, would become eligible for execution in the Core Trading Session immediately upon conclusion of the Market Order Auction.

Lastly, with respect to category (3) described above, currently the Exchange conducts a Market Order Auction of such securities which is based upon the types of orders eligible for execution where the auction price could be based on the Indicative Match Price or the midpoint of the first uncrossed NBBO after 6:30 a.m. (Pacific Time). The Exchange proposes for Nasdaq-listed securities to match and execute as many market orders as possible at the midpoint of the first uncrossed NBBO after 6:30 a.m. (Pacific Time). Limit orders and any remaining market order interest in Nasdaq-listed securities would be ranked in price/time priority as described in PCXE Rule 7.36 and processed pursuant to PCXE Rule 7.37.

The Exchange believes that clarifying the Market Order Auction pricing mechanism would help ensure that ETP Holders and investors understand how orders in the auction will be priced. In particular for those types of securities (*i.e.*, exchange-listed securities for which the Corporation is not the primary market excluding exchange traded funds and Nasdaq-listed securities) in which the Exchange may not have sufficient liquidity on the Arca Book at the open to execute the Market Order Auction at a price that is substantially close to the opening price on the primary market, the Exchange seeks to provide its ETP Holders with the opportunity to have those orders execute at the primary markets' prices. Further, implementing price collars would help ensure that when ArcaEx conducts a Market Order Auction, the auction would execute at prices within range of where the stock is currently trading.

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with Section 6(b)[10] of the Act, in general, and furthers the objectives of Section 6(b)(5),[11] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principals of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system. The Exchange believes that clarifying and improving the Market Order Auction pricing mechanism as described in this filing should result in a clearer understanding of how orders will be priced at the open and may provide greater assurance that orders will be priced at prices that are substantially close to where the stock is trading.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change, as amended, will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change, as amended, were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, as amended, or

(B) Institute proceedings to determine whether the proposed rule change, as amended, 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–PCX–2005–58 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number SR–PCX–2005–58. 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

[9] PCXE Rule 7.37 describes ArcaEx's execution processes including the Directed Order Process, Display Order Process, Working Order Process, and Tracking Order Process.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the PCX. 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–PCX–2005–58 and should be submitted on or before August 19, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–4024 Filed 7–28–05; 8:45 am]

BILLING CODE 8010–01–P

[12] 17 CFR 200.30–3(a)(12).

SOCIAL SECURITY ADMINISTRATION

The Ticket to Work and Work Incentives Advisory Panel Meeting

AGENCY: Social Security Administration (SSA).

ACTION: Notice of quarterly and strategic planning meeting.

DATES: August 29, 2005–9 a.m. to 6 p.m., August 30, 2005–9 a.m. to 5 p.m., August 31, 2005–9 a.m. to 3 p.m.

ADDRESSES: Crowne Plaza Northstar Hotel, 618 Second Avenue South, Minneapolis, MN 55402.

SUPPLEMENTARY INFORMATION: *Type of Meeting:* On August 29–31, 2005, the Ticket to Work and Work Incentives Advisory Panel (the ''Panel'') will hold a quarterly and strategic planning meeting open to the public.

Purpose: In accordance with section 10(a)(2) of the Federal Advisory Committee Act, the Social Security Administration (SSA) announces a meeting of the Ticket to Work and Work Incentives Advisory Panel. Section 101(f) of Public Law 106–170 establishes the Panel to advise the President, the Congress, and the Commissioner of SSA on issues related to work incentive programs, planning, and assistance for individuals with disabilities as provided under section 101(f)(2)(A) of the Act. The Panel is also to advise the Commissioner on matters specified in section 101(f)(2)(B) of that Act, including certain issues related to the Ticket to Work and Self-Sufficiency Program established under section 101(a).

Interested parties are invited to attend the meeting. The Panel will use the meeting time to receive briefings and presentations on matters of interest, conduct full Panel deliberations on the implementation of the Act and receive public testimony.

The Panel will meet in person commencing on Monday, August 29, 2005, from 9 a.m. until 6 p.m. The quarterly meeting will continue on Tuesday, August 30, 2005, from 9 a.m. until 5 p.m. The Panel will meet in person for a strategic planning meeting on Wednesday, August 31, 2005, from 9 a.m. until 3 p.m.

Members of the public must schedule a time slot in order to comment. In the event public comments do not take the entire scheduled time period, the Panel may use that time to deliberate or conduct other Panel business. Public testimony will be heard on Monday, August 29, 2005, from 5 p.m. until 6 p.m. and Tuesday, August 30, 2005, from 9 a.m. until 9:30 a.m. Individuals interested in providing testimony in person should contact the Panel staff as outlined below to a schedule time slot. Each presenter will be acknowledged by the Chair in the order in which they are scheduled to testify and is limited to a maximum five-minute, verbal presentation.

Full written testimony on the Implementation of the Ticket to Work and Work Incentives Program, no longer than five (5) pages, may be submitted in person or by mail, fax or e-mail on an on-going basis to the Panel for consideration.

Since seating may be limited, persons interested in providing testimony at the meeting should contact the Panel staff by e-mailing Ms. Shirletta Banks, at *Shirletta.banks@ssa.gov* or by calling (202) 358–6430.

The full agenda for the meeting will be posted on the Internet at *http://www.ssa.gov/work/panel* at least one week before the starting date or can be received, in advance, electronically or by fax upon request.

Contact Information: Records are kept of all proceedings and will be available for public inspection by appointment at the Panel office. Anyone requiring information regarding the Panel should contact the staff by:

Mail addressed to the Social Security Administration, Ticket to Work and Work Incentives Advisory Panel Staff, 400 Virginia Avenue, SW., Suite 700, Washington, DC 20024.

Telephone contact with Debra Tidwell-Peters at (202) 358–6430. Fax at (202) 358–6440. E-mail to *TWWIIAPanel@ssa.gov.*

Dated: July 22, 2005.

Chris Silanskis,

Designated Federal Officer.

[FR Doc. 05–14968 Filed 7–28–05; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice 5143]

30-Day Notice of Proposed Information Collections

ACTION: Notice of request for public comments and submission to OMB of proposed collection of information.

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995.

- Title of Information Collection: Statement of Registration
- OMB Control Number: 1405–0002
- Type of Request: Extension of Currently Approved Collection
- Originating Office: Bureau of Political-Military Affairs, Directorate of Defense Trade Controls, PM/DDTC
- Form Number: DS–2032
- Respondents: Business and non-profit organizations
- Estimated Number of Respondents: 3,500 (total)
- Estimated Number of Responses: 3,500 (per year)
- Average Hours Per Response: 2 hours
- Total Estimated Burden: 7,000 hours (per year)
- Frequency: Every one or two years
- Obligation to Respond: Mandatory
- Title of Information Collection: Application/License for Permanent Export of Unclassified Defense Articles and Related Unclassified Technical Data
- OMB Control Number: 1405–0003
- Type of Request: Extension of Currently Approved Collection
- Originating Office: Bureau of Political-Military Affairs, Directorate of Defense Trade Controls, PM/DDTC
- Form Number: DSP–5
- Respondents: Business and non-profit organizations

• Estimated Number of Respondents: 5,000 (total)
• Estimated Number of Responses: 35,000 (per year)
• Average Hours Per Response: 1 hour
• Total Estimated Burden: 35,000 hours (per year)
• Frequency: On occasion
• Obligation to Respond: Required to Obtain Benefits
• Title of Information Collection: Application/License for Temporary Import of Unclassified Defense Articles
• OMB Control Number: 1405–0013
• Type of Request: Extension of Currently Approved Collection
• Originating Office: Bureau of Political-Military Affairs, Directorate of Defense Trade Controls, PM/DDTC
• Form Number: DSP–61
• Respondents: Business and non-profit organizations
• Estimated Number of Respondents: 200 (total)
• Estimated Number of Responses: 1,200 (per year)
• Average Hours Per Response: ½ hour (30 minutes)
• Total Estimated Burden: 600 hours (per year)
• Frequency: On occasion
• Obligation to Respond: Required to Obtain Benefits
• Title of Information Collection: Application/License for Temporary Export of Unclassified Defense Articles
• OMB Control Number: 1405–0023
• Type of Request: Extension of Currently Approved Collection
• Originating Office: Bureau of Political-Military Affairs, Directorate of Defense Trade Controls, PM/DDTC
• Form Number: DSP–73
• Respondents: Business and non-profit organizations
• Estimated Number of Respondents: 400 (total)
• Estimated Number of Responses: 2,700 (per year)
• Average Hours Per Response: 1 hour
• Total Estimated Burden: 2,700 hours (per year)
• Frequency: On occasion
• Obligation to Respond: Required to Obtain Benefits
• Title of Information Collection: Application/License for Permanent/Temporary Export or Temporary Import of Classified Defense Articles and Classified Technical Data
• OMB Control Number: 1405–0022
• Type of Request: Extension of Currently Approved Collection
• Originating Office: Bureau of Political-Military Affairs, Directorate of Defense Trade Controls, PM/DDTC
• Form Number: DSP–85
• Respondents: Business and non-profit organizations
• Estimated Number of Respondents: 100 (total)
• Estimated Number of Responses: 260 (per year)
• Average Hours Per Response: ½ hour (30 minutes)
• Total Estimated Burden: 130 hours (per year)
• Frequency: On occasion
• Obligation to Respond: Required to Obtain Benefits
• Title of Information Collection: Non-Transfer and Use Certificate
• OMB Control Number: 1405–0021
• Type of Request: Extension of Currently Approved Collection
• Originating Office: Bureau of Political-Military Affairs, Directorate of Defense Trade Controls, PM/DDTC
• Form Number: DSP–83
• Respondents: Business and non-profit organizations
• Estimated Number of Respondents: 5,000 (total)
• Estimated Number of Responses: 9,000 (per year)
• Average Hours Per Response: 1 hour
• Total Estimated Burden: 9,000 hours (per year)
• Frequency: On occasion
• Obligation to Respond: Required to Obtain Benefits
• Title of Information Collection: Statement of Political Contributions, Fees, or Commissions in Connection with the Sale of Defense Articles or Services
• OMB Control Number: 1405–0025
• Type of Request: Extension of Currently Approved Collection
• Originating Office: Bureau of Political-Military Affairs, Directorate of Defense Trade Controls, PM/DDTC
• Form Number: None.
• Respondents: Business and non-profit organizations
• Estimated Number of Respondents: 5,000 (total)
• Estimated Number of Responses: 7,250 (per year)
• Average Hours Per Response: 1 hour
• Total Estimated Burden: 7,250 hours (per year)
• Frequency: On occasion
• Obligation to Respond: Mandatory
• Title of Information Collection: Application for Amendment to License for Export or Import of Classified or Unclassified Defense Articles and Related Technical Data
• OMB Control Number: 1405–0092
• Type of Request: Extension of Currently Approved Collection
• Originating Office: Bureau of Political-Military Affairs, Directorate of Defense Trade Controls, PM/DDTC
• Form Number: DSP–119
• Respondents: Business and non-profit organizations
• Estimated Number of Respondents: 5,000 (total)
• Estimated Number of Responses: 9,000 (per year)
• Average Hours Per Response: ½ hour (30 minutes)
• Total Estimated Burden: 4,500 hours (per year)
• Frequency: On occasion
• Obligation to Respond: Required to Obtain Benefits
• Title of Information Collection: Authority to Export Defense Articles and Services Sold under the Foreign Military Sales (FMS) Program
• OMB Control Number: 1405–0051
• Type of Request: Extension of Currently Approved Collection
• Originating Office: Bureau of Political-Military Affairs, Directorate of Defense Trade Controls, PM/DDTC
• Form Number: DSP–94
• Respondents: Business and non-profit organizations
• Estimated Number of Respondents: 250 (total)
• Estimated Number of Responses: 2,500 (per year)
• Average Hours Per Response: ½ hour (30 minutes)
• Total Estimated Burden: 1,250 hours (per year)
• Frequency: On occasion
• Obligation to Respond: Required to Obtain Benefits
• Title of Information Collection: Request for Approval of Manufacturing License Agreements, Technical Assistance Agreements, and Other Agreements
• OMB Control Number: 1405–0093
• Type of Request: Extension of Currently Approved Collection
• Originating Office: Bureau of Political-Military Affairs, Directorate of Defense Trade Controls, PM/DDTC
• Form Number: None
• Respondents: Business and non-profit organizations
• Estimated Number of Respondents: 5,000 (total)
• Estimated Number of Responses: 6,700 (per year)
• Average Hours Per Response: 2 hours
• Total Estimated Burden: 13,400 hours (per year)
• Frequency: On occasion
• Obligation to Respond: Required to Obtain Benefits
• Title of Information Collection: Maintenance of Records by Registrants
• OMB Control Number: 1405–0111
• Type of Request: Extension of Currently Approved Collection
• Originating Office: Bureau of Political-Military Affairs, Directorate of Defense Trade Controls, PM/DDTC

- Form Number: None
- Respondents: Business and non-profit organizations
- Estimated Number of Respondents: 5,000 (total)
- Estimated Number of Responses: 5,000 (per year)
- Average Hours Per Response: 20 hours
- Total Estimated Burden: 100,000 hours (per year)
- Frequency: On occasion
- Obligation to Respond: Mandatory
- Title of Information Collection: Prior Approval for Brokering Activity
- OMB Control Number: 1405–0142
- Type of Request: Extension of Currently Approved Collection
- Originating Office: Bureau of Political-Military Affairs, Directorate of Defense Trade Controls, PM/DDTC
- Form Number: None
- Respondents: Business and non-profit organizations
- Estimated Number of Respondents: 14 (total)
- Estimated Number of Responses: 25 (per year)
- Average Hours Per Response: 2 hours
- Total Estimated Burden: 50 hours (per year)
- Frequency: On occasion
- Obligation to Respond: Required to Obtain Benefits
- Title of Information Collection: Brokering Activity Reports
- OMB Control Number: 1405–0141
- Type of Request: Extension of Currently Approved Collection
- Originating Office: Bureau of Political-Military Affairs, Directorate of Defense Trade Controls, PM/DDTC
- Form Number: None
- Respondents: Business and non-profit organizations
- Estimated Number of Respondents: 280 (total)
- Estimated Number of Responses: 280 (per year)
- Average Hours Per Response: 2 hours
- Total Estimated Burden: 560 hours (per year)
- Frequency: On occasion
- Obligation to Respond: Mandatory

DATES: Submit comments to the Office of Management and Budget (OMB) for up to 30 days from July 29, 2005.

ADDRESSES: Direct comments and questions to Katherine Astrich, the Department of State Desk Officer in the Office of Information and Regulatory Affairs at the Office of Management and Budget (OMB), who may be reached at 202–395–4718. You may submit comments by any of the following methods:

- E-mail: *Katherine_T._Astrich@omb.eop.gov.* You must include the DS form number, information collection title, and OMB control number in the subject line of your message.
- Mail (paper, disk, or CD–ROM submissions): Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20503.
- Fax: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: You may obtain copies of the proposed information collection and supporting documents from Angelo Chang, the Acting Director of the Office of Defense Trade Controls Management, Department of State, who may be reached via telephone at 202–663–2830, or via e-mail at *ChangAA@state.gov.*

SUPPLEMENTARY INFORMATION: We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary to properly perform our functions.
- Evaluate the accuracy of our estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of technology.

Abstract of proposed collection: The export, temporary import, temporary export and brokering of defense articles, defense services and related technical data are licensed by the Directorate of Defense Trade Controls in accordance with the International Traffic in Arms Regulations (22 CFR parts 120–130). The public must submit an application or written request of the transaction to the Department to obtain a decision whether it is in the interests of U.S. foreign policy and national security to approve the transaction. Also, there is an annual reporting requirement from the defense industry regarding all brokering activity that was transacted. Furthermore, there is a requirement for the public to maintain such records for five years.

Methodology: These forms/information collections may be sent to the Directorate of Defense Trade Controls via the following methods: mail, personal delivery, fax, and/or electronically.

Dated: June 14, 2005.

Michael T. Dixon,

Deputy Assistant Secretary for Defense Trade Controls, Acting, Bureau of Political-Military Affairs, Department of State.

[FR Doc. 05–15047 Filed 7–28–05; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF STATE

[Public Notice 5144]

Culturally Significant Objects Imported for Exhibition Determinations: ''Max Liebermann: From Realism to Impressionism''

AGENCY: Department of State.

ACTION: Notice.

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 [64 FR 56014], Delegation of Authority No. 236 of October 19, 1999 [64 FR 57920], 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, ''Max Liebermann: From Realism to Impressionism,'' 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 lenders. I also determine that the exhibition or display of the exhibit objects at the Skirball Cultural Center, Los Angeles, California, from on or about September 15, 2005, to on or about January 29, 2006, the Jewish Museum, New York, New York, from on or about March 10, 2006, to on or about July 9, 2006, 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, contact Paul W. Manning, Attorney-Adviser, Office of the Legal Adviser, (202) 453–8052, and the address is United States Department of State, SA–44, Room 700, 301 4th Street, SW., Washington, DC 20547–0001.

Dated: July 22, 2005.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 05–15048 Filed 7–28–05; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of the Availability for the O'Hare Modernization Final Environmental Impact Statement, Final Section 4(f) and Section 6(f) Evaluation, and Final General Conformity Determination, Chicago O'Hare International Airport, Chicago, IL

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of availability of the O'Hare Modernization Final Environmental Impact Statement (FEIS), Final Section 4(f) and Section 6(f) Evaluation, and Final General Conformity Determination.

Location of Proposed Action: O'Hare International Airport, Des Plaines and DuPage River Watersheds, Cook and DuPage Counties, Chicago, Illinois (Sections 4, 5, 6, 7, 8, 9, 16, 17, and 18, Township 416 North, Range 10 East, 3rd P.M.). Please see the airport location maps showing the locations of the wetlands and non-wetland Waters of the U.S. potentially affected by the Build Alternatives from the FEIS. The Notice of Availability is also available on the FAA's Web site at *http://www.agl.faa.gov/OMP/FEIS.htm* under the title Notice of Availability of the O'Hare Modernization Final EIS, Final Section 4(f) and Section 6(f) Evaluation, and Final General Conformity Determination.

SUMMARY: The Federal Aviation Administration (FAA) announces that the O'Hare Modernization Final Environmental Impact Statement (FEIS), Final Section 4(f) and Section 6(f) Evaluation, and Final General Conformity Determination, for Chicago O'Hare International Airport, Chicago, Illinois, are available for public review. The FAA will accept comment on specific sections of the FEIS that have been updated and/or refined for purposes of the FEIS, in part, because of response to comments on the Draft EIS, Draft Section 4(f) and Section 6(f) Evaluation, and Draft General Conformity Determinations.

The comment period is open as of the date of this Notice of Availability and closes Tuesday, September 6, 2005. The FAA will accept comments on updated and/or refined information in the following sections of the FEIS and the associated appendices:

(1) Sections 3.6 and 3.7, of Chapter 3, Alternatives.

(2) Section 5.6, Air Quality, of Chapter 5, Environmental Consequences.

(3) Subsections 5.21.4 through 5.21.11, of Section 5.21, Environmental Justice, of Chapter 5, Environmental Consequences.

(4) Section 5.8, Section 4(f) and Section 6(f) Resources, of Chapter 5, Environmental Consequences.

(5) Section 5.22, Other Issues Relating to Cemetery Acquisition, of Chapter 5, Environmental Consequences.

(6) Section 5.23, Issues Relating to Due Process Claims and Formal Adjudicative Processes, of Chapter 5, Environmental Consequences.

(7) Chapter 7, Mitigation.

The FEIS identifies alternatives intended to address the projected needs of the Chicago region by reducing delays at O'Hare, thereby enhancing capacity of the National Airspace System, and ensuring that terminal facilities and supporting infrastructure can efficiently accommodate airport users. All of the development alternatives would result in wetland, property acquisition, air quality and noise impacts, as well as other impacts.

All comments are to be submitted to Michael W. MacMullen of the FAA, at the address shown below. The USACE and IEPA have requested that the FAA be the recipient of all comments regarding their actions. These comments must be sent to Michael W. MacMullen of the FAA at the address shown below, and the comments must be postmarked and e-mail must be sent by no later than 5 p.m., central standard time, Tuesday, September 6, 2005.

The USACE participated in the EIS process because implementation of any development alternative, if selected, would require the USACE to approve issuance of a permit to fill wetlands under Section 404 of the Clean Water Act Section. The IEPA participated in the EIS process because implementation of any wetland development alternative, if selected, would also require IEPA to issue a Water Quality Certification under Section 401 of the Clean Water Act.

SUPPLEMENTARY INFORMATION: The City of Chicago (City), Department of Aviation, as owner and operator of Chicago O'Hare International Airport (O'Hare or the Airport), PO Box 66142, Chicago, IL 60666, proposes to modernize O'Hare to address existing and future capacity and delay problems. The City initiated master planning and the process of seeking FAA approval to amend its airport layout plan to depict the O'Hare Modernization Program (OMP). The City is also seeking the other necessary FAA approvals to implement the OMP and associated capital improvements and procedures. The FAA has prepared a FEIS addressing specific improvements at and adjacent to Chicago O'Hare International Airport, Chicago, Illinois. FAA's FEIS presents an evaluation of the City's proposed project and reasonable alternatives. Under the City's concept, O'Hare's existing seven-runway configuration would be replaced by an eight-runway configuration, in which six runways would be oriented generally in the east/west direction, the existing northeast/southwest-oriented Runways 4L/22R and 4R/22L would remain, and Runways 14L/32R and 14R/32L would be closed.

Please see the airport location maps showing the locations of the wetlands and non-wetland Waters of the U.S. potentially affected by the Build Alternatives from the FEIS. This Notice of Availability is also available on the FAA's Web site at *http://www.agl.faa.gov/OMP/FEIS.htm* under the title Notice of Availability of the Final EIS.

The Final EIS is available for review until September 6, 2005, at the following libraries:

Arlington Heights Memorial Library	500 North Dunton Ave	Arlington Heights.
Bellwood Public Library	600 Bohland Ave	Bellwood.
Bensenville Community Public Library	200 S Church Rd	Bensenville.
Berkeley Public Library	1637 Taft Ave	Berkeley.
Bloomingdale Public Library	101 Fairfield Way	Bloomingdale.
College of DuPage Library	425 Fawell Blvd	Glen Ellyn.
Des Plaines Public Library	1501 Ellinwood Ave	Des Plaines.
Eisenhower Public Library	4652 N Olcott Ave	Harwood Heights.
Elk Grove Village Public Library	1001 Wellington Ave	Elk Grove.

Elmhurst Public Library	211 Prospect Ave	Elmhurst.
Elmwood Park Public Library	4 W Conti Pkwy	Elmwood Park.
Franklin Park Public Library	10311 Grand Ave	Franklin Park.
Glendale Heights Library	25 E Fullerton Ave	Glendale Heights.
Glenview Public Library	1930 Glenview Rd	Glenview.
Harold Washington Library	400 S. State St	Chicago.
Hoffman Estates Library	1550 Hassell Rd	Hoffman Estates.
Itasca Community Library	500 W. Irving Park Rd	Itasca.
Lombard Public Library	110 W Maple St	Lombard.
Maywood Public Library	121 S. 5th Ave	Maywood.
Melrose Park Public Library	801 N. Broadway	Melrose Park.
Morton Grove Public Library	6140 Lincoln Ave	Morton Grove.
Mount Prospect Public Library	10 S Emerson St	Mount Prospect.
Niles Public Library	6960 W Oakton St	Niles.
Northlake Public Library	231 N. Wolf Rd	Northlake.
Oak Park Public Library	834 Lake St	Oak Park.
Oakton Community College Library	1616 E. Golf Rd	Des Plaines.
Park Ridge Public Library	20 S Prospect Ave	Park Ridge.
River Forest Public Library	735 Lathrop Ave	River Forest.
River Grove Public Library	8638 W. Grand Ave	River Grove.
Schaumburg Township District Library	130 S Roselle Rd	Schaumburg.
Schiller Park Public Library	4200 Old River Rd	Schiller Park.
Villa Park Public Library	305 S Ardmore Ave	Villa Park.
Wood Dale Public Library	520 N Wood Dale Rd	Wood Dale.

Written comments, faxes and e-mails should be submitted to Michael W. MacMullen of the FAA. The comment period is open as of the date of this Notice of Availability and closes at 5 p.m. central standard time, Tuesday, September 6, 2005. The FAA will accept comments on updated and/or refined information in the following sections of the FEIS and the associated appendices:

(1) Sections 3.6 and 3.7, of Chapter 3, Alternatives.

(2) Sections 5.6, Air Quality, of Chapter 5, Environmental Consequences.

(3) Subsections 5.21.4 through 5.21.11, of Section 5.21, Environmental Justice, of Chapter 5, Environmental Consequences.

(4) Section 5.8, Section 4(f) and Section 6(f) Resources, of Chapter 5, Environmental Consequences.

(5) Section 5.22, Other Issues Relating to Cemetery Acquisition, of Chapter 5, Environmental Consequences.

(6) Section 5.23, Issues Relating to Due Process Claims and Formal Adjudicative Processes, of Chapter 5, Environmental Consequences.

(7) Chapter 7, Mitigation.

Comments received via e-mail can only be accepted with the full name and address of the individual commenting.

FOR FURTHER INFORMATION CONTACT: Michael W. MacMullen, Airports Environmental Program Manager, Federal Aviation Administration, Chicago Airports District Office, 2300 East Devon Avenue, Des Plaines, IL 60018. Telephone: 847–294–8339, FAX: 847–294–7046, e-mail address: *ompeis@faa.gov.*

Issued in Des Plaines, Illinois on July 20, 2005.

Barry Cooper,

Manager, Chicago Area Modernization Program Office, Great Lakes Region.

[FR Doc. 05–14757 Filed 7–28–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Associate Administrator for Commercial Space Transportation; Notice of availability and request for comment on a Draft Programmatic Environmental Impact Statement (PEIS) for Horizontal Launch and Reentry of Reentry Vehicles

AGENCY: Federal Aviation Administration (FAA), Associate Administrator for Commercial Space Transportation (AST) is the lead Federal agency for the development of this PEIS.

ACTION: Notice of Availability and Request for Comment.

SUMMARY: In accordance with National Environmental Policy Act (NEPA) regulations, the FAA is announcing the availability of and requesting comments on the Draft PEIS for Horizontal Launch and Reentry of Reentry Vehicles. Under the proposed action, the FAA would license the launch of horizontally launched vehicles and the reentry of reentry vehicles (RVs). The FAA has evaluated three horizontal launch vehicle (LV) design concepts and both powered and unpowered RV concepts. This PEIS assesses the potential programmatic environmental effects of licensing horizontal launches and reentries of RVs, as well as the licensing of launch facilities that would support horizontal launches and reentries. The information in the PEIS is not intended to address all site-specific launch issues. This PEIS will be used to tier subsequent environmental analyses for site-specific launches, reentries, or the operation of a launch or reentry site. To facilitate these site-specific environmental analyses the FAA has provided guidance throughout the PEIS in various sections and technical appendices. This PEIS is intended to update and replace the 1992 *Final PEIS for Commercial Reentry Vehicles and complement the 2001 PEIS for Licensing Launches*.

DATES: The public comment period for the NEPA process begins with the publication of the U.S. Environmental Protection Agency's notice in the **Federal Register**. To ensure that all comments can be addressed in the Final PEIS, comments must be received by the FAA no later than September 12, 2005. The FAA has developed a public participation Web site (*http://ast.faa.gov/lrra/PEIS_Site.htm*), where the public can submit comments electronically. Materials on the web site include a downloadable electronic version of the Draft PEIS; information about licensing and the NEPA process; frequently asked questions; and a public comment form. Public hearings may be requested by organizations or individuals that feel their concerns cannot be met through the available opportunities to comment.

FOR FURTHER INFORMATION CONTACT: Written and oral comments regarding the Draft PEIS should be submitted to, Mr. Doug Graham, FAA Environmental Specialist, FAA PEIS, c/o ICF Consulting, 9300 Lee Highway, Fairfax,

VA 22031; e-mail *FAA.PEIS@icfconsulting.com*; phone (703) 934–3950; fax (703) 934–3951; or through an online comment form available at *http://ast.faa.gov/lrra/PEIS_info_resources.htm*.

Additional Information: The proposed action is for the FAA to issue licenses for the launch of horizontally launched vehicles and the reentry of RVs, as well as the licensing of facilities that would support horizontal launches and reentries. The FAA exercises licensing authority in accordance with the Commercial Space Launch Act and Commercial Space Transportation Licensing Regulations, 14 CFR Ch. III, which authorize the FAA to license the launch of an LV or the reentry of an RV when conducted within the U.S. and those operated by U.S. citizens abroad. The scope of the PEIS includes launches on orbital and suborbital trajectories from both existing government launch facilities and nonfederal launch sites in the U.S. and abroad.

The FAA identified three types of LVs, called out in this analysis as Concept 1, Concept 2, and Concept 3, which would be typical of the vehicles that would operate within the activities specified in this PEIS. Additionally, both powered and unpowered RV concepts are considered in this analysis. This PEIS may be used to tier subsequent environmental documentation that the FAA would use to make a determination about licensing the launches and reentries of the aforementioned types of LVs and RVs. Additional environmental analysis would need to be conducted for any activity that is not addressed in this Draft PEIS or in previous environmental analyses.

Launch vehicles included in Concept 1 would use jet-powered take off with subsequent rocket ignition, and conduct a powered horizontal landing. These LVs would take off from conventional runways using jet power, and then ignite rocket engines at a specified altitude. The LV would use either suborbital or orbital trajectories depending on the mission. During descent, jet engines would be restarted at a specified altitude and the vehicle would fly to a powered, horizontal landing at a designated location.

Launch vehicles included in Concept 2 would use rocket powered take off and flight, and a non-powered horizontal landing. The rocket motors would be ignited while the LV is on the runway. After takeoff, the LV would follow a steep ascent trajectory that could be suborbital or orbital. The vehicle would not use powered descent but would glide to a horizontal landing at a designated location.

Launch vehicles included in Concept 3 would be carried aloft via assist aircraft with subsequent rocket ignition, and would conduct a non-powered horizontal landing. The vehicle would be comprised of an assist aircraft, such as a carrier or tow aircraft, and an LV, which would range from 9 to 46 meters (30 to 150 feet) in length. Depending on the design configuration, the LV could be attached to the top, mated to the underside, or tethered to the assist aircraft. After taking off on a horizontal runway, the LV would be released from the assist aircraft and rocket engines on the LV would be fired. The assist aircraft would make a powered horizontal landing after releasing the LV. The LV trajectory could be either orbital or suborbital. The LV would not use powered descent but would glide to a horizontal landing at a designated location.

Reentry vehicle concepts include both unpowered and powered vehicles. Once an unpowered RV concept enters Earth's atmosphere, it would glide, deploy a parachute or parafoil, and descend to the Earth's surface. Once a powered RV concept enters Earth's atmosphere, a propulsion system would be used to control descent and direct the RV to a landing site. Both RV concepts could be oriented vertically or horizontally during reentry and subsequent landing. The design and size of the RV dictates whether descent would be powered or unpowered. Some RVs would descend using a combination of unpowered and powered methods. For example, a rocket engine would be fired to slow initial descent, then a parachute would be deployed and finally when the RV is close to Earth's surface rocket engines would be fired for a final touch down.

Three alternatives to the proposed action were considered in the Draft PEIS. The first alternative would be to issue licenses for orbital Reusable Launch Vehicles (RLVs) using unpowered reentry and landing only. The second alternative would be to issue licenses to orbital RLVs using powered reentry and landing only. The third alternative would be to issue licenses of horizontal launches of RLVs where full rocket engine ignition occurs at or above 914 meters (3,000 feet). Under the No Action Alternative, the FAA would not issue licenses for the horizontal launch of LVs and reentry of RVs, as well as the operation of launch and reentry sites for such activities.

Potential impacts of the proposed action and alternatives were analyzed in the Draft PEIS. Potential environmental impacts of successful launches include impacts to the atmosphere, airspace, biological resources, cultural resources, public health and safety, hazardous materials and hazardous waste, geology and soils, land use, noise, socioeconomics, environmental justice, section 4(f) resources, orbital debris, aesthetic and visual resources, and water resources. The impacts of the No Action Alternative would be the same as those described for the affected environment in the Draft PEIS.

Potential cumulative impacts of the proposed action are also addressed in the Draft PEIS.

Dated: July 20, 2005.

John Sloan,

Acting Manager, Space Systems Development Division.

[FR Doc. 05–14972 Filed 7–28–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number 2005–21918]

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 *Avocation.*

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 2005–21918 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 August 29, 2005.

ADDRESSES: Comments should refer to docket number MARAD–2005–21918. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Michael Gordon, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–5468.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel *Avocation* is:

Intended Use: ''Carry paying crew for an offshore ocean sailing experience and occasional coastal sailboat races.''

Geographic Region: Atlantic coastwise. Inland tributary waters would be Long Island Sound, Chesapeake Bay, Naragansett Bay New York Harbor and the waters around Nantucket and Martha's Vineyard and the various bays of Maine and Massachusetts.

Dated: July 20, 2005.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 05–15070 Filed 7–28–05; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number 2005–21920]

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 *FoXROSE.*

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 2005–21920 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 August 29, 2005.

ADDRESSES: Comments should refer to docket number MARAD–2005–21920. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Michael Gordon, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–5468.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel *Foxrose* is:

Intended Use: ''Recreational Charter.''

Geographic Region: South Carolina, Georgia, Florida.

Dated: July 18, 2005.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 05–15077 Filed 7–28–05; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number 2005–21921]

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 HEARTBEAT.

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 2005–21921 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 August 29, 2005.

ADDRESSES: Comments should refer to docket number MARAD–2005–21921. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this

docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Michael Gordon, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–5468.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel *HEARTBEAT is:*

Intended Use: ''Near Coastal Charter with no more that six passengers.''

Geographic Region: Coastal Waters adjacent to Florida Panhandle.

Dated: June 18, 2005.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 05–15067 Filed 7–28–05; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: 2005–21919]

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 KUNU.

SUMMARY: As authorized by Public Law 105–383 and Public Law 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 2005–21919 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 Public Law 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 August 29, 2005.

ADDRESSES: Comments should refer to docket number MARAD–2005–21919. 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., et, Monday through Friday, except Federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Michael Gordon, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone (202) 366–5468.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel KUNU is:

Intended Use: ''Uninspected passenger vessel (SubchapterC) service for six or fewer paying passengers.''

Geographic Region: Pacific Northwest (Puget Sound, Lake Washington), San Francisco Bay (current).

Dated: June 15, 2005.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 05–15078 Filed 7–28–05; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number 2005–21917]

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 *Sha-Ron's Anacapa.*

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 2005–21917 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 August 29, 2005.

ADDRESSES: Comments should refer to docket number MARAD–2005–21917.

Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Michael Gordon, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–5468.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel *Sha-Ron's Anacapa is:*

Intended Use: ''Vessel will be used for hire for guided bear hunting and guided charters in Alaska.''

Geographic Region: Inshore and near shore waters of Alaska.

Dated: July 18, 2005.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 05–15071 Filed 7–28–05; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2005–21930; Notice 1]

Cooper Tire & Rubber Company, Receipt of Petition for Decision of Inconsequential Noncompliance

Cooper Tire & Rubber Company (Cooper) has determined that certain tires it produced in 2005 do not comply with S4.3(e) of 49 CFR 571.109, Federal Motor Vehicle Safety Standard (FMVSS) No. 109, ''New pneumatic tires.'' Cooper has filed an appropriate report pursuant to 49 CFR part 573, ''Defect and Noncompliance Reports.''

Pursuant to 49 U.S.C. 30118(d) and 30120(h), Cooper has petitioned for an exemption from the notification and remedy requirements of 49 U.S.C. chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety.

This notice of receipt of Cooper's petition is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

Cooper produced approximately 3,070 Cooper brand tires during the period from January 30, 2005 through May 21, 2005 that do not comply with FMVSS No. 109, S4.3(e). S4.3(e) of FMVSS No. 109 requires that ''each tire shall have permanently molded into or onto both sidewalls * * * (e) Actual number of plies in the sidewall, and the actual number of plies in the tread area if different.'' The noncompliant tires were marked ''tread 1 ply nylon + 2 ply steel + 1 ply polyester; sidewall 2 ply polyester.'' The correct marking should read ''tread 1 ply nylon, 2 ply steel + 2 ply polyester; sidewall 2 ply polyester.''

Cooper believes that the noncompliance is inconsequential to motor vehicle safety and that no corrective action is warranted. Cooper states that ''the incorrect number of tread plies on each tire does not present a safety-related defect. The subject tires, in fact, have 2 polyester tread plies.'' Cooper states that the tires comply with all other requirements of FMVSS No. 119.

Interested persons are invited to submit written data, views, and arguments on the petition described above. Comments must refer to the docket and notice number cited at the beginning of this notice and be submitted by any of the following methods. Mail: Docket Management Facility, U.S. Department of Transportation, Nassif Building, Room PL–401, 400 Seventh Street, SW., Washington, DC, 20590–0001. Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC. It is requested, but not required, that two copies of the comments be provided. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. except Federal holidays. Comments may be submitted electronically by logging onto the Docket Management System Web site at *http://dms.dot.gov.* Click on ''Help'' to obtain instructions for filing the document electronically. Comments may be faxed to 1–202–493–2251, or may be submitted to the Federal eRulemaking Portal: go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

The petition, supporting materials, and all comments received before the close of business on the closing date indicated below will be filed and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, notice of the decision will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: August 29, 2005.

Authority: 49 U.S.C. 30118, 30120: delegations of authority at CFR 1.50 and 501.8.

Issued on: July 22, 2005.

Ronald L. Medford,

Senior Associate Administrator for Vehicle Safety.

[FR Doc. 05–14975 Filed 7–28–05; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2005–21926; Notice 1]

Cooper Tire & Rubber Company, Receipt of Petition for Decision of Inconsequential Noncompliance

Cooper Tire & Rubber Company (Cooper) has determined that the markings on certain tires that it produced in 2004 and 2005 do not comply with S4.3(a) of 49 CFR 571.109, Federal Motor Vehicle Safety Standard (FMVSS) No. 109, ''New pneumatic tires.'' Cooper has filed an appropriate report pursuant to 49 CFR part 573, ''Defect and Noncompliance Reports.''

Pursuant to 49 U.S.C. 30118(d) and 30120(h), Cooper has petitioned for an exemption from the notification and remedy requirements of 49 U.S.C. chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety.

This notice of receipt of Cooper's petition is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

Affected are a total of approximately 2,606 Cooper Discoverer AST II tires in the 265/70R16 size, produced between October 10, 2004 and April 16, 2005. S4.3, Labeling requirements, requires compliance with 49 CFR part 574.5, ''Tire Identification and Record Keeping, Tire Identification Requirements.'' The size designation required by part 574.5 was incorrectly marked on the subject tires, which were molded with the letters ''TY'' as the second grouping of symbols in the tire identification number. The correct stamping should have been ''C2.''

Cooper believes that the noncompliance is inconsequential to motor vehicle safety and that no corrective action is warranted. Cooper states that the purpose of the tire identification number marking requirements is to facilitate the ability of the tire manufacturer to identify the tires in the event of a recall. Cooper asserts that the incorrect size designation in this case does not affect the ability to identify defective or nonconforming tires. Cooper points out that the tire size is correctly stamped on the sidewalls of the subject tires, and states that the tires comply with all other requirements of FMVSS No. 109 and 49 CFR 574.5.

Interested persons are invited to submit written data, views, and arguments on the petition described

above. Comments must refer to the docket and notice number cited at the beginning of this notice and be submitted by any of the following methods. Mail: Docket Management Facility, U.S. Department of Transportation, Nassif Building, Room PL–401, 400 Seventh Street, SW., Washington, DC, 20590–0001. Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC. It is requested, but not required, that two copies of the comments be provided. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. except Federal holidays. Comments may be submitted electronically by logging onto the Docket Management System Web site at *http://dms.dot.gov.* Click on ''Help'' to obtain instructions for filing the document electronically. Comments may be faxed to 1–202–493–2251, or may be submitted to the Federal eRulemaking Portal: go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

The petition, supporting materials, and all comments received before the close of business on the closing date indicated below will be filed and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, notice of the decision will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: August 29, 2005.

Authority: 49 U.S.C. 30118, 30120: delegations of authority at CFR 1.50 and 501.8.

Issued on: July 22, 2005.

Ronald L. Medford,

Senior Associate Administrator for Vehicle Safety.

[FR Doc. 05–14978 Filed 7–28–05; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2005–21928; Notice 1]

Cooper Tire & Rubber Company, Receipt of Petition for Decision of Inconsequential Noncompliance

Cooper Tire & Rubber Company (Cooper) has determined that certain tires it manufactured during 2004 and 2005 do not comply with S6.5(f) of Federal Motor Vehicle Safety Standard (FMVSS) No. 119, ''New pneumatic tires for vehicles other than passenger cars.'' Cooper has filed an appropriate report pursuant to 49 CFR part 573, ''Defect and Noncompliance Reports.''

Pursuant to 49 U.S.C. 30118(d) and 30120(h), Cooper has petitioned for an exemption from the notification and remedy requirements of 49 U.S.C. chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety.

This notice of receipt of Cooper's petition is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

Cooper produced approximately 15,692 Cooper brand tires during the period from October 3, 2004 through April 9, 2005 that do not comply with FMVSS No. 119, S6.5(f). S6.5(f) of FMVSS No. 119 requires that each tire shall be marked with ''[t]he actual number of plies * * * in the sidewall and, if different, in the tread area.'' The noncompliant tires were marked ''tread 2 ply steel + 3 ply polyester; sidewall 3 ply polyester.'' The correct marking should read ''tread 1 ply nylon, 2 ply steel + 3 ply polyester; sidewall 3 ply polyester.''

Cooper believes that the noncompliance is inconsequential to motor vehicle safety and that no corrective action is warranted. Cooper states that ''the incorrect number of tread plies on each tire does not present a safety-related defect. In addition to having the number of tread plies marked on the sidewall, the subject tires have an additional nylon tread ply.'' Cooper states that the tires comply with all other requirements of FMVSS No. 119.

Interested persons are invited to submit written data, views, and arguments on the petition described above. Comments must refer to the docket and notice number cited at the beginning of this notice and be submitted by any of the following methods. Mail: Docket Management Facility, U.S. Department of Transportation, Nassif Building, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC. It is requested, but not required, that two copies of the comments be provided. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. except Federal holidays. Comments may be submitted electronically by logging onto the Docket Management System Web site at *http://dms.dot.gov.* Click on ''Help'' to obtain instructions for filing the document electronically. Comments may be faxed to 1–202–493–2251, or may be submitted to the Federal eRulemaking Portal: go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

The petition, supporting materials, and all comments received before the close of business on the closing date indicated below will be filed and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, notice of the decision will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: August 29, 2005.

Authority: 49 U.S.C. 30118, 30120: delegations of authority at CFR 1.50 and 501.8.

Issued on: July 22, 2005.

Ronald L. Medford,

Senior Associate Administrator for Vehicle Safety.

[FR Doc. 05–14980 Filed 7–28–05; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2005–21929; Notice 1]

Cooper Tire & Rubber Company, Receipt of Petition for Decision of Inconsequential Noncompliance

Cooper Tire & Rubber Company (Cooper) has determined that certain tires it manufactured during 2005 do not comply with S6.5(f) of Federal Motor Vehicle Safety Standard (FMVSS) No. 119, ''New pneumatic tires for vehicles other than passenger cars.'' Cooper has filed an appropriate report pursuant to 49 CFR Part 573, ''Defect and Noncompliance Reports.''

Pursuant to 49 U.S.C. 30118(d) and 30120(h), Cooper has petitioned for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety.

This notice of receipt of Cooper's petition is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

Cooper produced approximately 195 Power King brand tires during the period from May 15, 2005 through May 21, 2005 that do not comply with FMVSS No. 119, S6.5(f). S6.5(f) of

FMVSS No. 119 requires that each tire shall be marked with ''[t]he actual number of plies * * * in the sidewall and, if different, in the tread area.'' The noncompliant tires were marked ''tread 2 ply steel + 2 ply polyester; sidewall 2 ply polyester.'' The correct marking should read ''tread 1 ply nylon, 2 ply steel + 2 ply polyester; sidewall 2 ply polyester.''

Cooper believes that the noncompliance is inconsequential to motor vehicle safety and that no corrective action is warranted. Cooper states that ''the incorrect number of tread plies on each tire does not present a safety-related defect. In addition to having the number of tread plies marked on the sidewall, the subject tires have an additional nylon tread ply.'' Cooper states that the tires comply with all other requirements of FMVSS No. 119.

Interested persons are invited to submit written data, views, and arguments on the petition described above. Comments must refer to the docket and notice number cited at the beginning of this notice and be submitted by any of the following methods. Mail: Docket Management Facility, U.S. Department of Transportation, Nassif Building, Room PL–401, 400 Seventh Street, SW., Washington, DC, 20590–0001. Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC. It is requested, but not required, that two copies of the comments be provided. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. except Federal Holidays. Comments may be submitted electronically by logging onto the Docket Management System Web site at *http://dms.dot.gov*. Click on ''Help'' to obtain instructions for filing the document electronically. Comments may be faxed to 1–202–493–2251, or may be submitted to the Federal eRulemaking Portal: go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.

The petition, supporting materials, and all comments received before the close of business on the closing date indicated below will be filed and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, notice of the decision will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: August 29, 2005.

Authority: 49 U.S.C. 30118, 30120: delegations of authority at CFR 1.50 and 501.8

Issued on: July 22, 2005.

Ronald L. Medford,

Senior Associate Administrator for Vehicle Safety.

[FR Doc. 05–14982 Filed 7–28–05; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2005–21845]

Notice of Receipt of Petition for Decision That Nonconforming 2005 Mercedes Benz Type 463 Short Wheel Base Gelaendewagen Multipurpose Passenger Vehicles Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petitions for decision that nonconforming 2005 Mercedes Benz Type 463 Short Wheel Base Gelaendewagen Multipurpose Passenger Vehicles are eligible for importation.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of two petitions for a decision that 2005 Mercedes Benz Type 463 Short Wheel Base (SWB) Gelaendewagen Multipurpose Passenger Vehicles (MPVs) that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards (FMVSS) are eligible for importation into the United States because they have safety features that comply with, or are capable of being altered to comply with, all such standards.

DATES: The closing date for comments on the petitions is August 29, 2005.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW., Washington, DC 20590. [Docket hours are from 9 am to 5 pm]. 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*.

FOR FURTHER INFORMATION CONTACT: Coleman Sachs, Office of Vehicle Safety Compliance, NHTSA (202–366–3151).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(B), a motor vehicle that was not originally manufactured to conform to all applicable FMVSS, and has no substantially similar U.S.-certified counterpart, shall be refused admission into the United States unless NHTSA has decided that the motor vehicle has safety features that comply with, or are capable of being altered to comply with, all applicable FMVSS based on destructive test data or such other evidence as NHTSA decides to be adequate.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Wallace Environmental Testing Laboratories, Inc., of Houston, Texas (''WETL'') (Registered Importer 09–005), petitioned NHTSA to decide whether 2005 Type 463 SWB Gelaendewagen MPVs are eligible for importation into the United States. Shortly after WETL's petition was filed, J.K. Technologies, L.L.C., of Baltimore, Maryland (J.K.) (Registered Importer 09–006) separately petitioned NHTSA to decide whether 2005 Type 463 SWB Gelaendewagen MPVs are eligible for importation into the United States. Because the two petitions pertain to the same vehicle, NHTSA is soliciting comments on both petitions in this notice. WETL and J.K. believe that these vehicles can be made to conform to all applicable FMVSS.

In their petitions, both WETL and J.K. noted that NHTSA has granted import eligibility to the 2004 Mercedes Benz 463 SWB Gelaendewagen MPV (covered by vehicle eligibility number VCP–28) that they claim is identical to the 2005 Mercedes Benz 463 SWB Gelaendewagen MPV. Because both petitioners assert that the subject vehicles are similar to the 2004 model year vehicles that have been deemed eligible for importation under vehicle eligibility number VCP–28, we regard the petitions as pertaining to both the

Cabriolet and the Three Door versions of the vehicle. In the petition for the 2004 model, the petitioner asserted that over a period of ten years, NHTSA has granted import eligibility to a number of Mercedes Benz Gelaendewagen 463 vehicles. These include the 1990–1996 SWB version of the vehicle (assigned vehicle eligibility number VCP–14) and the 1996 through 2001 long wheel base (LWB) version of the vehicle (assigned vehicle eligibility numbers VCP–11, VCP–15, VCP–16, VCP–18, and VCP–21). These eligibility decisions were based on petitions submitted by J.K. and another registered importer, Europa International, Inc., of Santa Fe, New Mexico (Registered Importer 91–206), claiming that the vehicles are capable of being altered to comply with all applicable FMVSS. Because those vehicles were not manufactured for importation into and sale in the United States, and were not certified by their original manufacturer (Daimler Benz), as conforming to all applicable FMVSS, they cannot be categorized as ''substantially similar'' to the 2005 SWB versions for purposes of establishing import eligibility under 49 U.S.C. 30141(a)(1)(A). In addition, while there are some similarities between the SWB and LWB versions, NHTSA has decided that the 2002 through 2005 LWB versions of the vehicle that Mercedes Benz has manufactured for importation into and sale in the United States cannot be categorized as substantially similar to the SWB versions for the purpose of establishing import eligibility under section 30141(a)(1)(A). Therefore, WETL's and J.K.'s petitions are being processed pursuant to 49 U.S.C. 30141(a)(1)(B) alone.

WETL and J.K. submitted information with their petitions intended to demonstrate that 2005 Type 463 SWB Gelaendewagen MPVs, as originally manufactured, comply with many applicable FMVSS and are capable of being modified to comply with all other applicable standards to which they were not originally manufactured to conform.

Specifically, the petitioners claim that 2005 Type 463 SWB Gelaendewagen MPVs have safety features that comply with Standard Nos. 102 *Transmission Shift Lever Sequence, Starter Interlock, and Transmission Braking Effect*, 103 *Windshield Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems*, 106 *Brake Hoses*, 113 *Hood Latch System,* 116 *Motor Vehicle Brake Fluid*, 119 *New Pneumatic Tires for Vehicles Other than Passenger Cars*, 124 *Accelerator Control Systems*, 135 *Passenger Car Brake Systems*, 201 *Occupant Protection in Interior Impact*, 202 *Head Restraints*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 206 *Door Locks and Door Retention Components*, 207 *Seating Systems*, 209 *Seat Belt Assemblies*, 210 *Seat Belt Assembly Anchorages*, 212 *Windshield Mounting*, 214 *Side Impact Protection*, 216 *Roof Crush Resistance,* 219 *Windshield Zone Intrusion*, and 302 *Flammability of Interior Materials*.

Additionally, WETL claims that 2005 Type 463 SWB Gelaendewagen MPVs, as originally manufactured, comply with Standard No. 120 *Tire Selection and Rims for Motor Vehicles Other than Passenger Cars*.

Both petitioners contend that the vehicles are capable of being altered to comply with the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) Replacement of the instrument cluster with a U.S.-model component; and (b) reprogramming and initialization of the vehicle control system to integrate the new instrument cluster and activate required warning systems.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) Installation of U.S.-model taillamp assemblies or modification of existing taillamps to conform to the standard; and (b) installation of front and rear U.S.-model sidemarker lamps.

Standard No. 111 *Rearview Mirrors:* Replacement of the passenger side rearview mirror with a U.S.-model component or inscription of the required warning statement on the mirror's surface.

Standard No. 114 *Theft Protection:* Reprogramming of the vehicle control systems to comply with the standard.

Standard No. 118 *Power-Operated Window, Partition, and Roof Panel Systems:* Reprogramming of the vehicle control systems to comply with the standard.

Standard No. 208 *Occupant Crash Protection:* Programming of the vehicle control systems to activate the required seat belt warning system. The petitioners state that the vehicles are equipped with driver's and passenger's air bags and knee bolsters, and with combination lap and shoulder belts that are self-tensioning and that release by means of a single red push button at the front and rear outboard seating positions.

Standard No. 225 *Child Restraint Anchorage Systems:* Installation of U.S.-model child seat anchorage components.

The petitioners also state that a vehicle identification plate must be affixed to the vehicle near the left windshield post and a reference and certification label must be affixed in the area of the left front door post to meet the requirements of 49 CFR Part 565.

J.K. additionally contends that the vehicles are capable of being altered to comply with the following standards, in the manner described below:

Standard No. 101 *Controls and Displays:* Substitution of a lens marked ''Brake'' for a lens with a noncomplying symbol on the brake failure indicator lamp, and replacement or conversion of the speedometer to read in miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* Installation of U.S.-model headlamps.

Standard No. 120 *Tire Selection and Rims for Motor Vehicles Other than Passenger Cars:* Installation of a tire information placard.

Standard No. 301 *Fuel System Integrity:* J.K. states that the vehicles' fuel systems must be modified with U.S.-model parts to meet U.S. Environmental Protection Agency (EPA) OBDII, Spit Back, and enhanced EVAP requirements. J.K. claims that as modified, these systems will control all fuel leaks in the case of an impact.

WETL additionally contends that the vehicles are capable of being altered to comply with the following standards, in the manner described below:

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) Installation of U.S.-model front turn signal lamps; and (b) installation of a U.S.-model high-mounted stoplamp assembly.

Standard No. 301 *Fuel System Integrity:* Installation of a rollover valve to comply with to the standard.

Interested persons are invited to submit comments on the petitions described above. Comments should refer to the docket number and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW., Washington, DC 20590. [Docket hours are from 9 a.m. to 5 p.m.]. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Claude H. Harris,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 05–15064 Filed 7–28–05; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2005–21912]

Decision That Certain Nonconforming Motor Vehicles Are Eligible for Importation

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

ACTION: Notice of decision by NHTSA that certain nonconforming motor vehicles are eligible for importation.

SUMMARY: This document announces decisions by NHTSA that certain motor vehicles not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they are substantially similar to vehicles originally manufactured for importation into and/or sale in the United States and certified by their manufacturers as complying with the safety standards, and they are capable of being readily altered to conform to the standards or because they have safety features that comply with, or are capable of being altered to comply with, all applicable Federal motor vehicle safety standards.

DATES: These decisions became effective on the dates specified in Annex A.

FOR FURTHER INFORMATION CONTACT: Coleman Sachs, Office of Vehicle Safety Compliance, NHTSA (202–366–3151).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Where there is no substantially similar U.S.-certified motor vehicle, 49 U.S.C. 30141(a)(1)(B) permits a nonconforming motor vehicle to be admitted into the United States if its safety features comply with, or are capable of being altered to comply with, all applicable Federal motor vehicle safety standards based on destructive test data or such other evidence as NHTSA decides to be adequate.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

NHTSA received petitions from registered importers to decide whether the vehicles listed in Annex A to this notice are eligible for importation into the United States. To afford an opportunity for public comment, NHTSA published notice of these petitions as specified in Annex A. The reader is referred to those notices for a thorough description of the petitions. No substantive comments were received in response to these notices. Based on its review of the information submitted by the petitioners, NHTSA has decided to grant the petitions.

Vehicle Eligibility Number for Subject Vehicles

The importer of a vehicle admissible under any final decision must indicate on the form HS–7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. Vehicle eligibility numbers assigned to vehicles admissible under this decision are specified in Annex A.

Final Decision

Accordingly, on the basis of the foregoing, NHTSA hereby decides that each motor vehicle listed in Annex A to this notice, which was not originally manufactured to comply with all applicable Federal motor vehicle safety standards, is either (1) substantially similar to a motor vehicle manufactured for importation into and/or sale in the United States, and certified under 49 U.S.C. 30115, as specified in Annex A, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards or (2) has safety features that comply with, or are capable of being altered to comply with, all applicable Federal motor vehicle safety standards.

Authority: 49 U.S.C. 30141(a)(1)(A), (a)(1)(B) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Claude H. Harris,

Director, Office of Vehicle Safety Compliance.

Annex A—Nonconforming Motor Vehicles Decided to be Eligible for Importation

1. Docket No. NHTSA–2005–20489:
Nonconforming Vehicles: 2004–4005 Porsche Carrera GT Passenger Cars.
Substantially Similar U.S.—Certified Vehicles: 2004–4005 Porsche Carrera GT Passenger Cars.
Notice of Petition Published at: 70 FR 11308 (March 8, 2005).
Vehicle Eligibility Number: VSP–463 (effective date April 15, 2005).

2. Docket No. NHTSA–2005–20649:
Nonconforming Vehicles: 2003–2004 Porsche Cayenne Multipurpose Passenger Vehicles.
Substantially Similar U.S.—Certified Vehicles: 2003–2004 Porsche Cayenne Multipurpose Passenger Vehicles.
Notice of Petition Published at: 70 FR 13229 (March 18, 2005).
Vehicle Eligibility Number: VSP–464 (effective date April 26, 2005).

3. Docket No. NHTSA–2005–20645:
Nonconforming Vehicles: 1981 BMW R100 Motorcycles.
Substantially Similar U.S.—Certified Vehicles: 1981 BMW R100 Motorcycles.
Notice of Petition Published at: 70 FR 13230 (March 18, 2005).
Vehicle Eligibility Number: VSP–465 (effective date April 26, 2005).

4. Docket No. NHTSA–2005–20663:
Nonconforming Vehicles: 2002 Jeep Liberty Multipurpose Passenger Vehicles.
Substantially Similar U.S.—Certified Vehicles: 2002 Jeep Liberty Multipurpose Passenger Vehicles.
Notice of Petition Published at: 70 FR 14749 (March 23, 2005).
Vehicle Eligibility Number: VSP–466 (effective date May 4, 2005).

5. Docket No. NHTSA–2005–20686:
Nonconforming Vehicles: 1989 Volkswagen Golf Rallye Passenger Cars.
Substantially Similar U.S.—Certified Vehicles: 1989 Volkswagen Golf Rallye Passenger Cars.
Notice of Petition Published at: 70 FR 14751 (March 23, 2005).
Vehicle Eligibility Number: VSP–467 (effective date May 4, 2005).

6. Docket No. NHTSA–2005–21011:
Nonconforming Vehicles: 2001–2005 Mercedes Benz Sprinter Trucks.
Substantially Similar U.S.—Certified Vehicles: 2001–2005 Mercedes Benz Sprinter Trucks.
Notice of Petition Published at: 70 FR 20798 (April 21, 2005).
Vehicle Eligibility Number: VSP–468 (effective date June 15, 2005).

7. Docket No. NHTSA–2005–21263:
Nonconforming Vehicles: 1991 Mercedes Benz 560 SEL Passenger Cars.

Substantially Similar U.S.—Certified Vehicles: 1991 Mercedes Benz 560 SEL Passenger Cars.

Notice of Petition Published at: 70 FR 30182 (May 25, 2005).

Vehicle Eligibility Number: VSP–469 (effective date July 6, 2005).

8. Docket No. NHTSA–2005–21010:

Nonconforming Vehicles: 2002–2003 Hobby Wohnwagenwerk Exclusive 650 KMFE Trailers.

Because there are no substantially similar U.S.-certified versions of the 2002–2003 Hobby Wohnwagenwerk Exclusive 650 KMFE Trailers, the petitioner sought import eligibility under 49 U.S.C. 30141(a)(1)(B).

Notice of Petition Published at: 70 FR 20797 (April 21, 2005).

Vehicle Eligibility Number: VCP–29 (effective date June 15, 2005).

9. Docket No. NHTSA–2005–21334:

Nonconforming Vehicles: 2005 Smart Car Fortwo Coupe & Cabriolet, (including trim levels Passion, Pulse and Pure) Passenger Cars.

Because there are no substantially similar U.S.-certified versions of the 2005 Smart Car Fortwo Coupe & Cabriolet, (including trim levels Passion, Pulse and Pure) Passenger Cars, the petitioner sought import eligibility under 49 U.S.C. 30141(a)(1)(B).

Notice of Petition Published at: 70 FR 32701 (June 3, 2005).

Vehicle Eligibility Number: VCP–30 (effective date July 14, 2005).

[FR Doc. 05–14974 Filed 7–28–05; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Integrity Management Notifications for Gas Transmission Lines

AGENCY: Office of Pipeline Safety (OPS), Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice of advisory bulletin.

SUMMARY: Current regulations require operators to notify OPS and state pipeline safety agencies of certain events related to integrity management programs for gas transmission lines. This bulletin provides guidance on notifying OPS and state agencies and describes OPS' review of notifications. OPS expects this bulletin to improve the efficiency of the notification and review process.

FOR FURTHER INFORMATION CONTACT: Zach Barrett by phone at (405) 954–5559 or by e-mail at *zbarrett@tsi.jccbi.gov*, regarding the subject matter of this guidance. General information about the PHMSA/OPS programs may be obtained by accessing OPS's Home page at *http://OPS.dot.gov.*

SUPPLEMENTARY INFORMATION: OPS' safety regulations for managing the integrity of gas transmission lines (49 CFR part 192, subpart O) require operators to notify OPS and certain state pipeline safety agencies whenever the operators significantly change their integrity management programs (49 CFR 192.909(b)). Notifications are also required before operators can use technology other than in-line inspection, pressure testing, or direct assessment to assess pipeline integrity (49 CFR 192.921(a) (4) and 192.937(c) (4)). Notifications are required when operators cannot meet the schedule required for remediation of anomalous conditions and safety is not otherwise provided (49 CFR 192.933(c)).

OPS and state agencies review the notifications to assure compliance of the underlying actions with applicable integrity management requirements in Subpart O of Part 192. The following Advisory Bulletin provides additional details regarding this notification and review process.

Advisory Bulletin (ADB–05–04)

To: Operators of gas transmission lines.

Subject: Notifications required by the integrity management regulations in 49 CFR part 192, subpart O.

Purpose: To provide guidance on notifying OPS and state agencies and information about OPS's review of the notifications.

Advisory

Introduction

The integrity management regulations for gas transmission lines (49 CFR part 192, subpart O) require that operators notify OPS of each of the following events:

1. When operators make changes to their integrity management programs that may substantially affect the program's implementation or may significantly modify the program or schedule for carrying out the program elements (49 CFR 192.909(b)).

2. When operators plan to use technology other than in-line inspection, pressure testing, or direct assessment to perform assessments of pipeline integrity (49 CFR 192.921(a)(4) and 192.937(c)(4)).

3. When operators cannot meet the schedule required by the rule for remediating any identified condition and cannot provide safety through a temporary reduction in operating pressure or other action (49 CFR 192.933(c)).

In addition, operators must send notifications of these events to each state or local pipeline safety agency that either regulates the safety of the transmission line involved or inspects the line under an interstate agent agreement with OPS. Operators may notify OPS by mail, facsimile, or the on-line database (49 CFR 192.949). Notification of state agencies should be done according to state agency procedures.

The following sections of this advisory bulletin provide guidance on notifying OPS and state agencies and explain OPS's review of notifications. The bulletin gives special attention to notifications concerning ''other technology''—particularly guided wave ultrasound—and scheduling problems. OPS developed the bulletin based on its experience with Subpart O notifications.

Notifying OPS

As provided by § 192.949, operators may notify OPS by mail, facsimile, or via the Web at *http://primis.rspa.dot.gov/gasimp/*. The Web option is OPS's preferred method of receiving notifications because it enables operators to enter information directly into the Integrity Management Database (IMDB). (Note that as a result of the recent creation of the Pipeline and Hazardous Materials Safety Administration within DOT, a new Web address, *http://primis.phmsa.dot.gov/gasimp*, was established. The old address will continue to work for some time, and OPS plans to revise § 192.949 to include the new address.)

OPS uses the IMDB to coordinate its review of notifications among its regional offices and with state pipeline safety agencies. OPS transfers notifications submitted via other means to the IMDB, with the attendant possibility for error.

Operators desiring to notify OPS via the Web should go to the specified Web address and select ''Notifications'' from the topic links in the left-hand frame. This will open a page with instructions for submitting notifications and for downloading a Microsoft Word template for use in stating each notification. Operators can download the template from the link within the section of this Web page entitled ''How to: Download and Use the Notification Template.'' (Some users may have to scroll down the page to see this section). As described further in the downloading instructions, an operator can use the template on a local computer system to create a Word document that includes the notification and a table for entering pipeline data. Although OPS does not require operators to submit this data with the notification, OPS believes it would facilitate its review of the

notification. OPS may request the data if it has additional questions after its initial review of the notification. The document can be printed, circulated for review, and used to obtain any approval/concurrences the operator requires.

Once the Word document is ready for submission, an operator should return to the Web site and again select ''Notifications.'' On the notifications page within both the instructions for submitting notifications and the instructions for downloading the template, operators will find a link to an ''upload/submission form.'' Operators should click on that link to open the Notification Submittal Form. This is a simple form, requiring only a few pieces of identifying information:

- First, the operator must select from one of the three ''types'' of notifications: substantive program change, other technology, and remediation/repair.
- Next, the operator enters identifying information including the operator name and ID number and the name, job title, e-mail address, and telephone number of the person making the submission.
- The operator must then click ''Browse'' in the ''Upload File Attachment'' section of the ''File Attachment and Additional Comments'' portion of the form. This will open a file selection window like those used by all Microsoft programs to locate and open files. The operator will navigate to the file in its local computer file system and click ''Open'' to attach it to the submission form.
- Finally, the operator can enter any additional comments in the field provided, although comments are not required to be included.

When the form is complete, including the file attachment, the operator clicks ''Save'' to upload the form and its attached file into the IMDB.

Operators can also e-mail completed Word documents to *Clearinghouse@cycla.com*, as described in the instructions. Operator e-mails should include the name of the operator, its OPID number, and the name, title, telephone number, and e-mail address of an operator contact for each notification.

Operators who use the other two methods of submitting notifications—mail and facsimile—should clearly identify the notification as ''Subpart O Integrity Management Notification.'' Operators should also include the name of a contact person, including the contact's e-mail address. (OPS will use this address to communicate the status of a notification's review).

Notifying State Agencies

State pipeline safety agencies have a significant role in assuring compliance of gas transmission lines with the Subpart O integrity management regulations and in reviewing Subpart O notifications. Agencies that regulate the safety of intrastate lines have primary responsibility for reviewing notifications concerning transmission lines they oversee. Agencies that inspect interstate lines under agreements with OPS send comments on notifications concerning these lines to OPS, which has primary responsibility for reviewing the notifications.

Thus, when a state agency is involved in the review, it is important that operators send notifications directly to that state agency as Subpart O requires. However, experience to date shows that operators often overlook the requirement to send notifications to state agencies. Simply notifying OPS does not satisfy the requirement to notify appropriate state agencies.

For each notification OPS receives, it is also important for OPS to know if a state agency has a role in overseeing the line involved in the notification. If a notification sent to OPS does not indicate the state in which the line is located and whether the line is interstate or intrastate, OPS will have to ascertain this information and may contact the operator for assistance.

Review of Notifications by OPS

OPS does not treat integrity management notifications as petitions for approval of the underlying actions. Subpart O regulations do not require such approval. Rather, OPS uses the notifications to determine if further review is needed to verify that the actions described in the notifications are consistent with safety and the Subpart O regulations.

The form of review depends on whether the transmission line involved is under direct state or OPS safety oversight. For intrastate transmission lines regulated directly by a state pipeline safety agency, the state agency conducts the review under its own procedures. OPS enters notifications related to these intrastate lines into the IMDB database, except notifications entered directly by operators. OPS enters the results of state reviews in the same manner as described below for OPS reviews.

OPS reviews notifications related to all other regulated transmission lines, i.e., interstate lines and those intrastate lines not regulated directly by a state pipeline safety agency. OPS enters the notifications into the IMDB database, except those entered by operators themselves. After OPS begins its review, the status of the notification in the database changes from ''submitted'' to ''under review.'' If the e-mail address of an operator's contact is in the notification entered in the database, the contact will receive an automatic e-mail message of this change in status.

On the basis of information an operator includes in a notification and OPS's familiarity with the action described in the notification, OPS decides whether further inspection of the matter is necessary. If further review is necessary, OPS enters in the database that it has ''objections'' to the action. Then OPS begins a further review of the matter by sending a letter to the operator that states the objections and allows the operator an opportunity to respond to the objections. OPS then changes the status of the notification in the IMDB database to ''objections noted.'' If, based on the operator's response, OPS decides that further review of the matter is not necessary, OPS enters in the database that it has ''no objections'' to the action, but does not send a letter to the operator. If the e-mail address of an operator contact is in the database, the contact will receive an automatic e-mail message of each change in status.

The gas integrity management Web page, *http://primis.phmsa.dot.gov/gasimp/*, describes this review process in more detail. A process description, including a flow chart, can be found in the ''Key Documents'' section of that page. There is also a link to the Key Documents page in the ''Notifications'' section.

Notifications Concerning Use of ''Other Technology'': In order to expedite any potential review, notifications concerning use of ''other technology'' should include the following information:

1. The operator's demonstration that the ''other technology'' can provide an equivalent understanding of the condition of the line pipe, as required by 49 CFR 192.921(a)(4) and 192.937(c)(4). The demonstration should explain the following:
   - Where and how the technology will be used
   - What procedures will be followed
   - What criteria will apply to data analysis and evaluation, including verification excavations and acceptance and rejection of anomalies
2. Procedures for ensuring that qualified personnel will implement the technology, as required by 49 CFR 192.915 and subpart N of part 192.

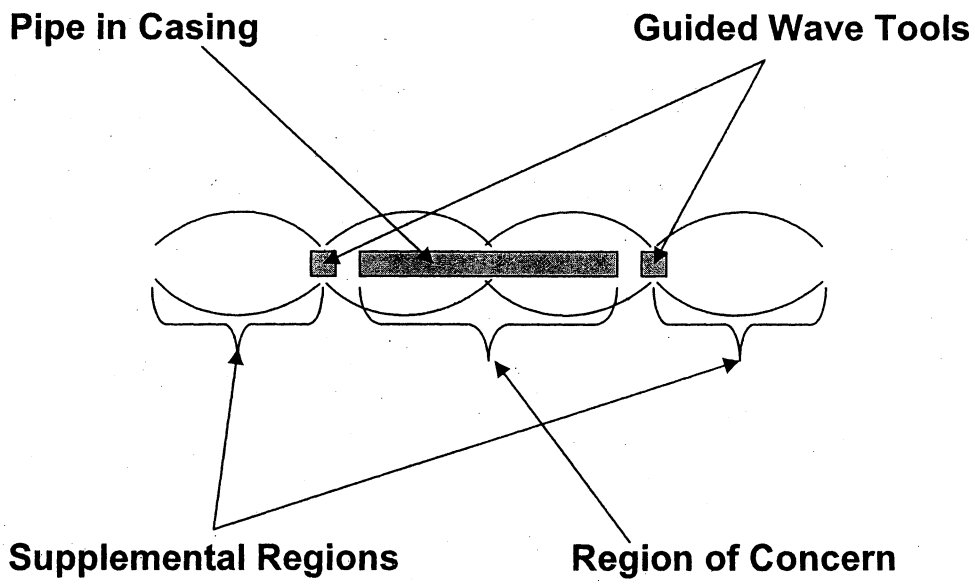
Various operators have submitted notifications of their plans to use guided wave ultrasound as ''other technology''

for assessing the integrity of transmission line segments in casings. Guided wave ultrasound can be used to assess pipe for some distance on either side of a bell hole in which inspection equipment is located, making the technology suitable for assessing pipe within a casing. The technology is capable of detecting metal loss and of providing indications of dents, although sizing of dents is very difficult. OPS has experience in reviewing notifications on the use of this technology on hazardous liquid pipelines and, when satisfied with the information presented, has closed these notifications under the classification ''no objections'' noted. OPS understands that the technology's performance in specific applications is critically dependent on the inspection equipment and procedures used and the training and qualification of those involved in its use.

If further review is necessary for notifications concerning use of guided wave ultrasound technology, as part of the equivalency demonstration under 49 CFR 192.921(a)(4) or 192.937(c)(4), OPS may ask operators to show use of the technology with inspection equipment set up in a typical condition of intended use. This information is especially important for applications that do not involve using the technology on both sides of a casing.

Guided wave ultrasound is capable of taking readings in both directions from its placement on a section of line pipe, as shown by the illustration below. To validate the technology's application, operators should investigate all indications of potential threats to pipeline integrity in the opposite direction of the casing (supplemental region) and should excavate at least once in each supplemental region if no indications of concern are identified. Indications of welds are one of many potential readings operators should use to verify the accuracy of the device. Operators must demonstrate that all applications are effective for the type conditions, equipment, procedures, and performance measures for detecting the severity of the anomaly.

Using Guided Wave Ultrasound at a Casing



Scheduling Problems. If further review of a notification concerning failure to meet a remediation schedule and otherwise provide for public safety is needed, OPS may ask the operator to explain why remediation by means other than pipe replacement or lowering the pressure is not feasible.

Additional Information

Additional questions concerning notifications or any aspect of compliance with Subpart O requirements can be sent via the ''Question or Comment'' link on the public Web site (*http://primis.phmsa.dot.gov/gasimp/*). OPS staff involved in integrity management oversight will respond. OPS also encourages operators to review the Frequently Asked Questions (FAQ) on the Web site, which provide the answers to many common questions.

Issued in Washington, DC, on July 25, 2005.

Stacey L. Gerard,

Associate Administrator for Pipeline Safety.

[FR Doc. 05–15022 Filed 7–28–05; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

30-Day Notice of an Information Collection Under Review by the Office of Management and Budget (OMB), and Request for Comments: Application To Open an Account for Billing Purposes

SUMMARY: The Surface Transportation Board (Board) gives notice that the Board has submitted to OMB a request for review and clearance of the Board's Application to Open an Account for Billing Purposes, in accordance with the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* (PRA). The Board

previously published a notice about this collection in the **Federal Register** on May 17, 2005 at 70 FR 28354. That notice allowed for a 60-day public review and comment period on the proposed reinstatement without change of this previously approved information collection. No comments were received.

The purpose of the current notice is to allow an additional 30 days for public comment to satisfy the requirements of the Paperwork Reduction Act, 44 U.S.C. 3507(b). Comments are requested concerning (1) whether the particular collection of information described below is necessary for the proper performance of the functions of the Board, including whether the collection has practical utility; (2) the accuracy of the Board's burden estimates; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) 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, when appropriate. Submitted comments will be considered by OMB prior to approval of the proposed collection.

Overview of this information collection:

Title: Application to Open an Account for Billing Purposes.

OMB Control Number: 2104–0006.

Form Number: STB Form 1032.

Number of Respondents: 20.

Affected Public: Rail carriers, shippers, and others doing business before the agency.

Estimated Time Per Response: Less than .08 hours. This estimate is based on actual past survey information.

Frequency of Response: The form will only have to be completed once by each account holder.

Total Annual Burden Hours: Less than 1.6 hours.

Total Annual ''Non-Hour Burden'' Cost: No ''non-hour cost'' burdens associated with this collection have been identified.

Needs and Uses: The Board is, by statute, responsible for the economic regulation of surface transportation carriers operating in interstate commerce. This form is for use by applicants who wish to open an account with the Board to charge fees for records search, review, copying, certification of records, filing fees, and related services rendered. The account holder would be billed on a monthly basis for payment of accumulated fees. Data provided will also be used for debt collection activities. The form requests information as required by OMB and U.S. Department of Treasury regulations for the collection of fees. This information is not duplicated by any other agency. In accordance with the Privacy Act, 5 U.S.C. 552a, all taxpayer identification and social security numbers will be secured and used only for credit management and debt collection activities. The information will be retained until the account holder indicates that he wishes to close the account and all debts are paid in full.

DATES: Written comments are due on August 29, 2005.

ADDRESSES: Written comments should be identified as ''Paperwork Reduction Act Comments, Surface Transportation Board Application to Open an Account for Billing Purposes, OMB Number 2140–0006.'' These comments should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Surface Transportation Board Desk Officer, Room 10235, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: For further information regarding the information collection, or for copies of the information collection form, contact Anthony Jacobik, Jr., (202) 565–1713. [Federal Information Relay Service (FIRS) for the hearing impaired: (800) 877–8339.]

SUPPLEMENTARY INFORMATION: Under the PRA, a Federal agency conducting or sponsoring a collection of information must display a currently valid Office of Management and Budget (OMB) control number. Collection of information is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requirements that persons submit reports, keep records, or provide information to the agency, third parties, or the public. Section 3507(b) of the PRA requires, concurrent with an agency's submitting a collection to OMB for approval, a 30-day notice and comment period through publication in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information.

Dated: July 25, 2005.

Vernon A. Williams,

Secretary.

[FR Doc. 05–15007 Filed 7–28–05; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34421]

HolRail LLC—Construction and Operation Exemption—in Orangeburg and Dorchester Counties, SC

AGENCY: Surface Transportation Board, Transportation.

ACTION: Notice of intent to prepare an Environmental Impact Statement; notice of initiation of the scoping process; notice of availability of draft Scope of Study for the Environmental Impact Statement and request for comments.

SUMMARY: On November 13, 2003, HolRail LLC (HolRail) filed a petition with the Surface Transportation Board (the Board or STB) pursuant to 49 U.S.C. 10502 for authority to construct and operate a rail line in Orangeburg and Dorchester counties, South Carolina (SC). The proposed project would involve the construction and operation of approximately two miles of new rail line from the existing cement production factory owned by HolRail's parent company, Holcim (US) Inc. (Holcim), located near Holly Hill in Orangeburg County, to the terminus of an existing rail line of the Norfolk Southern Railway Company (NSR), located to the south near Giant in Dorchester County.

Because the effects of the proposed project on the quality of the human environment are likely to be controversial, the Board's Section of Environmental Analysis (SEA) has determined that the preparation of an Environmental Impact Statement (EIS) is appropriate. The purpose of this Notice is to advise those individuals interested in or affected by the proposed project as well as agencies with special expertise or jurisdiction by law, of SEA's decision to prepare an EIS and to initiate the formal scoping process. This Notice also announces the availability of a draft Scope of Study and requests comments on the draft Scope of Study.

DATES: Comments are due by August 31, 2005.

Submitting Environmental Comments: If you wish to submit written comments regarding the attached proposed draft Scope of Study, please send an original and two copies to the Surface Transportation Board, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001, to the attention of David Navecky. Environmental comments may also be filed electronically on the Board's Web site, *http://www.stb.dot.gov*, by clicking on the ''E–FILING'' link. Please refer to

STB Finance Docket No. 34421 in all correspondence, including e-filings, addressed to the Board.

FOR FURTHER INFORMATION CONTACT: Mr. David Navecky, Section of Environmental Analysis, Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001, or (202) 565–1593, or *naveckyd@stb.dot.gov*. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Background: By petition filed on November 13, 2003, HolRail seeks an exemption from the Board under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10901 for authority to construct and operate a rail line in Orangeburg and Dorchester counties, SC approximately 40 miles northwest of Charleston and 60 miles southeast of Columbia.

The new rail line would establish alternative rail service at the Holly Hill facility which is presently served only by CSX Transportation, Inc. (CSX). Holcim recently completed an expansion of the Holly Hill plant and has determined that alternative rail access is necessary to achieve the full benefits of the expanded production capacity. HolRail would arrange for a third-party operator to provide rail service, and would employ a contractor to provide maintenance service for the line, or engage the third-party operator to perform this service.

Pursuant to the Board's responsibilities under the National Environmental Policy Act (NEPA), SEA has begun the environmental review of HolRail's proposal by consulting with appropriate Federal, State, and local agencies, as well as HolRail, and conducting technical surveys and analyses. SEA has also consulted with the South Carolina State Historic Preservation Office (SHPO) in accordance with the regulations implementing section 106 of the National Historic Preservation Act (NHPA) at 36 CFR part 800 and identified appropriate consulting parties to the section 106 process.

Based on the nature and content of the public and agency comments received, SEA has determined that the effects of the proposed project on the quality of the human environment are likely to be controversial, and that thus, preparation of an EIS is appropriate. At this point in the environmental review process, SEA intends to analyze the potential environmental impacts of the proposed route, the no-action or no-build alternative (*i.e.*, continuing to use of the CSX line), and at least one alternative route. SEA welcomes comments on these or additional alternatives.

Environmental Review Process: The NEPA process is intended to assist the Board and the public in identifying and assessing the potential environmental consequences of a proposed action before a decision on the proposed action is made. SEA is responsible for ensuring that the Board complies with NEPA and related environmental statutes. The first stage of the EIS process is scoping. Scoping is an open process for determining the scope of environmental issues to be addressed in the EIS. SEA has developed a draft Scope of Study for the EIS for public review and comment, which incorporates the issues and concerns raised in the comment letters SEA has received thus far. SEA is soliciting written comments on this draft Scope of Study. After the close of the comment period on the draft Scope of Study on August 31, 2005, SEA will review all comments received and then issue a final Scope of Study for the EIS.

Following the issuance of the final Scope of Study, SEA will prepare a Draft EIS (DEIS) for the project. The DEIS will address those environmental issues and concerns identified during the scoping process. It will also contain SEA's preliminary recommendations for environmental mitigation measures. Upon its completion, the DEIS will be made available for public and agency review and comment for at least 45 days. SEA will then prepare a Final EIS (FEIS) that addresses the comments on the DEIS from the public and agencies. Then, in reaching its decision in this case, the Board will take into account the DEIS, the FEIS, and all environmental comments that are received.

Draft Scope of Study for the EIS

Proposed Action and Alternatives

The proposed project would provide alternative rail access to the Holcim facility, which is currently only served by CSX. The existing CSX line begins at the terminus of an NSR rail line at Giant, SC, passes to the immediate west of the Holcim facility, and continues on to Creston, SC. The proposed action would involve the construction and operation of an approximately 2-mile rail line that would also begin at the terminus of the NSR line at Giant, SC and end at the Holcim facility.

HolRail proposes two potential alignments, both of which are on the east side of and parallel to the existing CSX line across Four Hole swamp. Alignment A would involve constructing the new rail line largely within the existing ROW of the CSX rail line. Alignment B would be constructed approximately 50 yards east of the CSX ROW, on property almost entirely owned by Holcim. Either alignment would connect with NSR to the south on land owned by a neighboring cement facility, over which HolRail intends to obtain access by easement or other arrangement.

HolRail intends to construct and own the track, which would be a part of the common carrier rail network. HolRail would arrange for a third-party operator to provide rail service. HolRail would also employ a contractor to provide maintenance service for the line, or engage the third-party operator to perform this service.

Environmental Impact Analysis

Proposed New Construction

The EIS will document the activities associated with the construction and operation of the proposed new rail line.

Impact Categories

Impact areas addressed in the EIS will include the effects of the proposed construction and operation of the new rail line on transportation and traffic safety, public health and worker health and safety, water resources, biological resources, air quality, geology and soils, land use, environmental justice, noise, vibration, recreation and visual resources, cultural resources, and socioeconomics. The EIS will include a discussion of each of these categories as they currently exist in the project area and will address the potential impacts from the proposed project on each category, as described below:

1. Transportation and Traffic Safety

The EIS will:

a. Describe the potential impacts of the proposed new rail line construction and operation on the existing transportation network in the project area.

b. Describe the potential for train derailments or accidents from proposed rail operations.

c. Describe potential pipeline safety issues at rail/pipeline crossings, as appropriate.

d. Propose mitigative measures to minimize or eliminate potential project impacts to transportation and traffic safety, as appropriate.

2. Public Health and Worker Health and Safety

The EIS will:

a. Describe potential public health impacts from the proposed new rail line construction and operation.

b. Describe potential impacts to worker health and safety from the proposed new rail line construction and operation.

c. Propose mitigative measures to minimize or eliminate potential project impacts to public health and worker health and safety, as appropriate.

3. Water Resources

The EIS will:

a. Describe the existing groundwater resources within the project area, such as aquifers and springs, and the potential impacts on these resources resulting from construction and operation of the proposed new rail line.

b. Describe the existing surface water resources within the project area, including watersheds, streams, rivers, and creeks, and the potential impacts on these resources resulting from construction and operation of the proposed new rail line.

c. Describe existing wetlands in the project area and the potential impacts on these resources resulting from construction and operation of the proposed new rail line.

d. Describe the permitting requirements that are appropriate for the proposed new rail line construction and operation regarding wetlands, stream crossings (including floodplains), water quality, and erosion control.

e. Propose mitigative measures to minimize or eliminate potential project impacts to water resources, as appropriate.

4. Biological Resources

The EIS will:

a. Describe the existing biological resources within the project area, including vegetative communities, wildlife and fisheries, and Federal and State threatened or endangered species and the potential impacts to these resources resulting from the proposed new rail line construction and operation.

b. Propose mitigative measures to minimize or eliminate potential project impacts to biological resources, as appropriate.

5. Air Quality Impacts

The EIS will:

a. Describe the potential air quality impacts resulting from the proposed new rail line construction and operation.

b. Propose mitigative measures to minimize or eliminate potential project impacts to air quality, as appropriate.

6. Geology and Soils

The EIS will:

a. Describe the native soils and geology of the proposed project area.

b. Describe the potential impacts to soils and geologic features from the proposed new rail line construction and operation.

c. Propose mitigative measures to minimize or eliminate potential project impacts on soils and geologic features, as appropriate.

7. Land Use

The EIS will:

a. Describe existing land use patterns within the project area and identify those land uses that would be potentially impacted by the proposed new rail line construction and operation.

b. Describe the potential impacts associated with the proposed new rail line construction and operation to land uses identified within the project area.

c. Propose mitigative measures to minimize or eliminate potential project impacts to land use, as appropriate.

8. Environmental Justice

The EIS will:

a. Describe the demographics of the communities potentially impacted by the construction and operation of the proposed new rail line.

b. Evaluate whether new rail line construction or operation would have a disproportionately high adverse impact on any minority or low-income group.

c. Propose mitigative measures to minimize or eliminate potential project impacts on environmental justice communities of concern, as appropriate.

9. Noise

The EIS will:

a. Describe the existing noise environment of the project area and potential noise impacts from the proposed new rail line construction and operation.

b. Propose mitigative measures to minimize or eliminate potential project impacts to noise receptors, as appropriate.

10. Vibration

The EIS will:

a. Describe the potential vibration impacts from the proposed new rail line construction and operation.

b. Propose mitigative measures to minimize or eliminate potential project impacts from vibration, as appropriate.

11. Recreation and Visual Resources

The EIS will:

a. Describe existing recreation and visual resources in the proposed project area and potential impacts to recreation and visual resources from construction and operation of the proposed new rail line.

b. Propose mitigative measures to minimize or eliminate potential project impacts to recreation and visual resources, as appropriate.

12. Cultural Resources

The EIS will:

a. Describe the cultural resources in the area of the proposed project and potential impacts to cultural resources from the proposed new rail line construction and operation.

b. Describe the NHPA Section 106 process for the proposed project, and propose mitigative measures to minimize or eliminate potential project impacts to cultural resources, as appropriate.

13. Socioeconomics

The EIS will:

a. Describe the demographic characteristics of the project area.

b. Describe the potential environmental impacts to employment and the local economy as a result of the proposed new rail line construction and operation.

c. Propose mitigative measures to minimize or eliminate potential project adverse impacts to socioeconomic resources, as appropriate.

14. Cumulative and Indirect Impacts

The EIS will:

a. Address any identified potential cumulative impacts of the proposed new rail line construction and operation, as appropriate. Cumulative impacts are the impacts on the environment which result from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such actions.

b. Address any identified potential indirect impacts of the proposed new rail line construction and operation, as appropriate. Indirect impacts are impacts that are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable.

Decided: July 21, 2005.

By the Board, Victoria Rutson, Chief, Section of Environmental Analysis.

Vernon A. Williams,

Secretary.

[FR Doc. 05–14923 Filed 7–28–05; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34705 (Sub–No. 1)]

Soo Line Railroad Company D/B/A Canadian Pacific Railway—Temporary Trackage Rights Exemption—BNSF Railway Company

BNSF Railway Company (BNSF) has agreed to grant temporary overhead trackage rights to expire on August 31, 2005, to Soo Line Railroad Company d/b/a Canadian Pacific Railway (CPR) over BNSF's rail line between Ardoch, ND, and Erskine, MN, as follows: (1) From Ardoch at BNSF milepost 24.5 to Grand Forks, ND, at BNSF milepost 0.0, (2) from Grand Forks at BNSF milepost 109.9 to Crookston Junction, MN, at BNSF milepost 80.9, and (3) from Crookston Junction at BNSF milepost 0.0 to Erskine at BNSF milepost 31.5, a total distance of approximately 84.6 miles.

The original temporary trackage rights granted in *Soo Line Railroad Company D/B/A Canadian Pacific Railway—Temporary Trackage Rights Exemption—BNSF Railway Company,* STB Finance Docket No. 34705 (STB served June 10, 2005), covered the same line, but are due to expire on July 31, 2005. The purpose of this transaction is to modify the temporary trackage rights exempted in STB Finance Docket No. 34705 to extend the expiration date from July 31, 2005, to August 31, 2005, because of delayed start-up of the maintenance project due to high water conditions.

The transaction is scheduled to be consummated on July 31, 2005. The modified temporary trackage rights will permit CPR to continue to bridge its train service while the main lines of its affiliated shortline railroad are out of service due to certain programmed track, roadbed and structural maintenance.

As a condition to this exemption, any employees affected by the acquisition of the temporary trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate,* 360 I.C.C. 653 (1980), and any employees affected by the discontinuance of those trackage rights will be protected by the conditions set out in *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979).

This notice is filed under 49 CFR 1180.2(d)(8). If it contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34705 (Sub-No. 1), 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 Thanh G. Bui, 150 South Fifth Street, Suite 2300, Minneapolis, MN 55402.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: July 25, 2005.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 05–15008 Filed 7–28–05; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34716]

R.J. Corman Railroad Company/Bardstown Line, d/b/a R.J. Corman Railroad Company/WV Lines—Lease and Operation Exemption—Line of R.J. Corman Railroad Property, LLC

R.J. Corman Railroad Company/Bardstown Line, d/b/a R.J. Corman Railroad Company/WV Lines (RJCV), a Class III rail carrier,[1] has filed a verified notice of exemption under 49 CFR 1150.41 to lease from R.J. Corman Railroad Property, LLC (Railroad Property) and operate a line of railroad (the Loup Creek Branch) extending from milepost 0.0 at Thurmond, WV, to milepost 12.0 at Mt. Hope, WV, a distance of approximately 12 miles.

This transaction is related to STB Finance Docket No. 34715, *R.J. Corman Railroad Property, LLC—Acquisition Exemption—Line of The Railroad Co. and The WV Southern Railway Co.,* in which Railroad Property seeks to acquire the Loup Creek Branch.

RJCV certifies that the projected annual revenues as a result of this transaction will not result in the creation of a Class II or Class I rail carrier, and further certifies that its projected annual revenues will not exceed $5 million.

The transaction was scheduled to be consummated on July 8, 2005.

[1] RJCV is controlled by Richard J. Corman, who also controls eight other Class III rail carriers in the eastern United States.

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. 34716, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Ronald A. Lane, Fletcher & Sippel LLC, 29 North Wacker Drive, Suite 920, Chicago, IL 60606–2832.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: July 22, 2005.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 05–15009 Filed 7–28–05; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34715]

R.J. Corman Railroad Property, LLC—Acquisition Exemption—Line of The Railroad Co. and The WV Southern Railway Co.

R.J. Corman Railroad Property, LLC (Railroad Property),[1] a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to acquire from The Railroad Co. (RRC) and The WV Southern Railway Co. (WVSR), a line of railroad (the Loup Creek Branch) extending from milepost 0.0 at Thurmond, WV, to milepost 12.0 at Mt. Hope, WV, a distance of approximately 12 miles. The Loup Creek Branch is currently owned by RRC and operated by WVSR, a wholly owned subsidiary of RRC.[2]

[1] Railroad Property is a member of the R.J. Corman family of nine Class III railroads. Railroad Property was formerly known as R.J. Corman Equipment Company, LLC. The name of that entity was formally changed to R.J. Corman Railroad Property, LLC, and its non-rail assets were transferred to a new noncarrier entity named R.J. Corman Equipment Company. As a result, the new ''Equipment Company'' does not own any railroad assets, and Railroad Property holds the railroad assets and bears the residual common carrier obligations of the ''old'' R.J. Corman Equipment Company, LLC.

[2] According to Railroad Property, it has reached an agreement with RRC, WVSR and CSX Transportation, Inc. (CSXT), the former owner of the Loup Creek Branch, for transfer of the Loup

Continued

This transaction is related to STB Finance Docket No. 34716, *R.J. Corman Railroad Company/Bardstown Line, d/b/a R.J. Corman Railroad Company/ WV Lines—Lease Exemption—Line of R.J. Corman Railroad Property, LLC*, in which R.J. Corman Railroad Company/ Bardstown Line, d/b/a R.J. Corman Railroad Company/WV Lines seeks to lease from Railroad Property and operate the Loup Creek Branch.

Railroad Property certifies that the projected annual revenues as a result of this transaction will not result in the creation of a Class II or Class I rail carrier, and further certifies that its projected annual revenues will not exceed $5 million.

The transaction was scheduled to be consummated on July 8, 2005.

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. 34715, must be filed with the Surface Transportation Board, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Ronald A. Lane, Fletcher & Sippel LLC, 29 North Wacker Drive, Suite 920, Chicago, IL 60606–2832.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov*.

Decided: July 22, 2005.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 05–15010 Filed 7–28–05; 8:45 am]

BILLING CODE 4915–01–P

Creek Branch to Railroad Property. RRC will simultaneously transfer title to the real estate underlying the Loup Creek Branch right-of-way to CSXT, and Railroad Property will lease the underlying real estate from CSXT.

DEPARTMENT OF THE TREASURY

Proposed Collections; Comment Requests

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork burdens, invites the general public and other Federal agencies to comment on the revision of an information collection that is proposed for approval by the Office of Management and Budget. The Office of International Affairs within the Department of the Treasury is soliciting comments concerning Treasury International Capital Form S, Purchases and Sales of Long-term Securities by Foreigners.

DATES: Written comments should be received on or before September 27, 2005 to be assured of consideration.

ADDRESSES: Direct all written comments to Dwight Wolkow, International Portfolio Investment Data Systems, Department of the Treasury, Room 4410–1440NYA, 1500 Pennsylvania Avenue, NW., Washington, DC 20220. In view of possible delays in mail delivery, please also notify Mr. Wolkow by e-mail (*dwight.wolkow@do.treas.gov*), fax (202) 622–1207 or telephone (202) 622–1276.

FOR FURTHER INFORMATION CONTACT: Copies of the proposed forms and instructions are available on the Treasury's TIC Forms Web page, *http://www.treas.gov/tic/forms.html*. Requests for additional information should be directed to Mr. Wolkow.

SUPPLEMENTARY INFORMATION:

Title: Treasury International Capital Form S, Purchases and Sales of Long-term Securities by Foreigners.

OMB Control Number: 1505–0001.

Abstract: Form S is part of the Treasury International Capital (TIC) reporting system, which is required by law (22 U.S.C. 286f; 22 U.S.C. 3103; E.O. 10033; 31 CFR 128), and is designed to collect timely information on international portfolio capital movements. Form S is a monthly report used to cover transactions in long-term marketable securities undertaken DIRECTLY with foreigners by banks, other depository institutions, brokers, dealers, underwriting groups and other individuals and institutions. This information is necessary for compiling the U.S. balance of payments accounts, for calculating the U.S. international investment position, and for formulating U.S. international financial and monetary policies.

Current Actions: (a) The list for reporting the location of foreign counterparties on all TIC reporting forms will be increased to a total of roughly 245 countries and other areas. This longer list is essentially the same as the lists used for years in the TIC benchmark and annual reports, and thus will establish a uniform list of countries/areas consistent across all TIC reporting forms. Comments from TIC respondents indicate that their modern computerized database systems can easily produce all TIC reports for this longer list of countries/areas. This change will apply to the monthly and quarterly B-forms, C-forms, Form D and Form S and will allow three TIC forms BC(SA), BL–1(SA) and BL–(SA) to be eliminated. This action is expected to result in an overall reduction in burden for TIC respondents as a whole, as well as satisfying Treasury's need for more timely information on a larger number of countries. Comments from TIC respondents indicate that the combination of the longer uniform country list and the virtual elimination of rows for ''other countries'' will reduce significantly the total burden from all TIC reports, including the burdens of cross-checking information, responding to inquiries from data compilers, and making revisions to data reports; and (b) these changes will be effective beginning with the reports as of June 30, 2006.

Type of Review: Revision of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Form S (1505–0001).

Estimated Number of Respondents: 240.

Estimated Average Time per Respondent: Five and six/tenths (5.6) hours per respondent per filing. The estimated average time per respondent varies from 10 hours for the approximately 30 major reporters to 5 hours for the other reporters.

Estimated Total Annual Burden Hours: 16,200 hours, based on 12 reporting periods per year.

Request For Comments: Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval. All comments will become a matter of public record. The public is invited to submit written comments concerning: (a) Whether Form S is necessary for the proper performance of the functions of the Office, including whether the information will have practical uses; (b) the accuracy of the above estimate of the burdens; (c) ways to enhance the quality, usefulness and clarity of the information to be collected; (d) ways to minimize the reporting and/or record keeping burdens on respondents, including the use of information technologies to automate the collection of the data; and (e) estimates of capital or start-up costs of operation,

maintenance and purchase of services to provide information.

Dwight Wolkow,

Administrator, International Portfolio Investment Data Systems.

[FR Doc. 05–15014 Filed 7–28–05; 8:45 am]

BILLING CODE 4811–33–P

DEPARTMENT OF THE TREASURY

Departmental Offices; Proposed Collections; Comment Requests

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork burdens, invites the general public and other Federal agencies to comment on the revision of an information collection that is proposed for approval by the Office of Management and Budget. The Office of International Affairs within the Department of the Treasury is soliciting comments concerning Treasury International Capital Form D, Report of Holdings of, and Transactions in, Financial Derivatives Contracts with Foreign Residents.

DATES: Written comments should be received on or before September 27, 2005 to be assured of consideration.

ADDRESSES: Direct all written comments to Dwight Wolkow, International Portfolio Investment Data Systems, Department of the Treasury, Room 4410–1440NYA, 1500 Pennsylvania Avenue, NW., Washington, DC 20220. In view of possible delays in mail delivery, please also notify Mr. Wolkow by e-mail (*dwight.wolkow@do.treas.gov*), fax (202) 622–1207 or telephone (202) 622–1276.

FOR FURTHER INFORMATION CONTACT: Copies of the proposed forms and instructions are available on the Treasury's TIC Forms Web page, *http://www.treas.gov/tic/forms.html*. Requests for additional information should be directed to Mr. Wolkow.

SUPPLEMENTARY INFORMATION:

Title: Treasury International Capital Form D, Report of Holdings of, and Transactions in, Financial Derivatives Contracts with Foreign Residents.

OMB Control Number: 1505–0199.

Abstract: Form D is part of the Treasury International Capital (TIC) reporting system, which is required by law (22 U.S.C. 286f; 22 U.S.C. 3103; E.O. 10033; 31 CFR 128) for the purpose of providing timely information on international capital movements other than direct investment by U.S. persons. Form D is a quarterly report used to cover holdings and transactions in derivatives contracts undertaken between foreign resident counterparties and major U.S.-resident participants in derivatives markets. This information is necessary for compiling the U.S. balance of payments and international investment position accounts, and for formulating U.S. international financial and monetary policies.

Current Actions: (a) The list for reporting the location of foreign counterparties on all TIC reporting forms will be increased to a total of roughly 245 countries and other areas. This longer list is essentially the same as the lists used for years in the TIC benchmark and annual reports, and thus will establish a uniform list of countries/areas consistent across all TIC reporting forms. Comments from TIC respondents indicate that their modern computerized database systems can easily produce all TIC reports for this longer list of countries/areas. This change will apply to the monthly and quarterly B-forms, C-forms, Form D and Form S and will allow three TIC forms BC(SA), BL–1(SA) and BL-(SA) to be eliminated. This action is expected to result in an overall reduction in burden for TIC respondents as a whole, as well as satisfying Treasury's need for more timely information on a larger number of countries. Comments from TIC respondents indicate that the combination of the longer uniform country list and the virtual elimination of rows for ''other countries'' will reduce significantly the total burden from all TIC reports, including the burdens of cross-checking information, responding to inquiries from data compilers, and making revisions to data reports; and (b) these changes will be effective beginning with the reports as of June 30, 2006.

Type of Review: Revision of a currently approved collection.

Affected Public: Business or other for profit organizations.

Form D (1505–0199).

Estimated Number of Respondents: 45.

Estimated Average Time per Respondent: Thirty (30) hours per respondent per filing, effective with the report as of September 2005 when mandatory reporting is fully implemented.

Estimated Total Annual Burden Hours: 5,400 hours, based on 4 reporting periods per year.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval. All comments will become a matter of public record. The public is invited to submit written comments concerning: (a) Whether Form D is necessary for the proper performance of the functions of the Office, including whether the information will have practical uses; (b) the accuracy of the above estimate of the burdens; (c) ways to enhance the quality, usefulness and clarity of the information to be collected; (d) ways to minimize the reporting and/or record keeping burdens on respondents, including the use of information technologies to automate the collection of the data; and (e) estimates of capital or start-up costs of operation, maintenance and purchase of services to provide information.

Dwight Wolkow,

Administrator, International Portfolio Investment Data Systems.

[FR Doc. 05–15015 Filed 7–28–05; 8:45 am]

BILLING CODE 4811–33–P

Corrections

Federal Register

Vol. 70, No. 145

Friday, July 29, 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 EDUCATION

Federal Pell Grant, Federal Perkins Loan, Federal Work-Study, Federal Supplemental Educational Opportunity Grant, Federal Family Education Loan, and William D. Ford Federal Direct Loan Programs

Correction

In notice document 05–10584 beginning on page 30425 in the issue of Thursday, May 26, 2005, make the following corrections:

1. On page 30426, in the last table titled ''Dependent students'', in the second column, under the heading ''and there are'' the entry ''two one parents'' should read ''two parents''.

2. On the same page, in the same table, in the third column, under the heading, ''and there are'' the entry ''two one parents'' should read ''two parents''.

3. On page 30427, in the first column, in the table titled ''Dependent students'', under the heading ''and there are'' the entry ''two one parents'' should read ''two parents''.

4. On the same page, in the last table, in the second column,, under the heading ''Then the contribution is–'', in the second line, ''−22% of AAI'' should read ''22% of AAI''.

[FR Doc. C5–10584 Filed 7–28–05; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Friday,
July 29, 2005

Part II

Department of Labor

Mine Safety and Health Administration

30 CFR Parts 56, 57, and 71
Asbestos Exposure Limit; Proposed Rule

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 56, 57, and 71

RIN: 1219–AB24

Asbestos Exposure Limit

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Proposed rule; notice of public hearings.

SUMMARY: We (MSHA) are proposing to revise our existing health standards for asbestos exposure at metal and nonmetal mines, surface coal mines, and surface areas of underground coal mines. The proposed rule would reduce the full-shift permissible exposure limit and the excursion limit for airborne asbestos fibers, and make several nonsubstantive changes to add clarity to the standard. Exposure to asbestos has been associated with lung and other cancers, mesotheliomas, and asbestosis. This proposed rule would help assure that fewer miners who work in an environment where asbestos is present would suffer material impairment of health or functional capacity over their working lifetime.

DATES: We must receive your comments on or before September 20, 2005. We will hold public hearings on October 18 and 20. Details about the public hearings are in the **SUPPLEMENTARY INFORMATION** section of this preamble.

ADDRESSES: (1) To submit comments, please include ''RIN: 1219–AB24'' in the subject line of the message and send them to us at either of the following addresses.

• *Federal e-Rulemaking portal:* Go to *http://www.regulations.gov* and follow the online instructions for submitting comments.

• *E-mail: zzMSHA-comments@dol.gov*. If you are unable to submit comments electronically, please identify them by ''RIN: 1219–AB24'' and send them to us by any of the following methods.

• *Fax:* 202–693–9441.

• *Mail, hand delivery, or courier:* MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Blvd., Rm. 2350, Arlington, VA 22209–3939.

(2) We will post all comments on the Internet without change, including any personal information they may contain. You may access the rulemaking docket via the Internet at *http://www.msha.gov/regsinfo.htm* or in person at MSHA's public reading room at 1100 Wilson Blvd., Rm. 2349, Arlington, VA.

(3) To receive an e-mail notification when we publish rulemaking documents in the **Federal Register**, subscribe to our *list serve* at *http://www.msha.gov/subscriptions/subscribe.aspx*.

FOR FURTHER INFORMATION CONTACT: Rebecca J. Smith at 202–693–9440 (Voice), 202–693–9441 (Fax), or *mailto:smith.rebecca@dol.gov* (E-mail).

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Outline of Preamble

We are including the following outline to help you find information in this preamble more quickly.

I. Introduction
- A. Outline of Preamble
- B. Dates and Locations for Public Hearings
- C. Executive Summary
- D. Abbreviations and Acronyms

II. Background
- A. Scope of Proposed Rule
- B. Where Asbestos Is Found at Mining Operations
- C. Asbestos Minerals

III. History of Asbestos Regulation
- A. MSHA's Asbestos Standards for Mining
- B. OSHA's Asbestos Standards for General Industry and Construction
- C. Other Federal Agencies Regulating Asbestos
- D. Other Asbestos-Related Activities
- E. U.S. Department of Labor, Office of the Inspector General (OIG)

IV. Health Effects of Asbestos Exposure
- A. Summary of Asbestos Health Hazards
- B. Factors Affecting the Occurrence and Severity of Disease
- C. Specific Human Health Effects
- D. Support from Toxicological Studies of Human Health Effects of Asbestos Exposure

V. Characterization and Assessment of Exposures in Mining
- A. Determining Asbestos Exposures in Mining
- B. Exposures from Naturally Occurring Asbestos
- C. Exposures from Introduced (Commercial) Asbestos
- D. Sampling Data and Exposure Calculations

VI. The Application of OSHA's Risk Assessment to Mining
- A. Summary of Studies Used by OSHA in Its Risk Assessment
- B. Models Selected by OSHA (1986) for Specified Endpoints and for the Determination of Its PEL and STEL
- C. OSHA's Selection of Its PEL (0.1 f/cc)
- D. Applicability of OSHA's Risk Assessment to the Mining Industry
- E. Significance of Risk

VII. Section-by-Section Discussion of Proposed Rule
- A. Sections 56/57.5001(b)(1) and 71.702(a): Definitions
- B. Sections 56/57.5001(b)(2) and 71.702(b): Permissible Exposure Limits (PELs)
- C. Sections 56/57.5001(b)(3) and 71.702(c): Measurement of Airborne Fiber Concentration
- D. Discussion of Asbestos Take-Home Contamination
- E. Section 71.701(c) and (d): Sampling; General Requirements

VIII. Regulatory Analyses
- A. Executive Order (E.O.) 12866
- B. Feasibility
- C. Alternatives Considered
- D. Regulatory Flexibility Analysis (RFA) and Small Business Regulatory Enforcement Fairness Act (SBREFA)
- E. Other Regulatory Considerations

IX. Copy of the OSHA Reference Method (ORM)

X. References Cited in the Preamble

B. Dates and Locations for Public Hearings

We will hold two public hearings. If you wish to make a statement for the record, please submit your request to us at least 5 days prior to the hearing dates by one of the methods listed in the **ADDRESSES** section above. The hearings will begin at 9 a.m. with an opening statement from MSHA, followed by statements or presentations from the public, and end after the last speaker (in any event not later than 5 p.m.) on the following dates at the locations indicated:

October 18, 2005, Denver Federal Center, Sixth and Kipling, Second Street, Building 25, Denver, Colorado 80225, Phone: 303–231–5412.

October 20, 2005, Mine Safety and Health Administration, 1100 Wilson Boulevard, Room 2539, Arlington, Virginia 22209, Phone: 202–693–9457.

We will hear scheduled speakers first, in the order that they sign in; however, you do not have to make a written request to speak. To the extent time is available, we will hear from persons making same-day requests. The presiding official may exercise discretion to ensure the orderly progress of the hearing by limiting the time allocated to each speaker for their presentation.

The hearings will be conducted in an informal manner. Although formal rules of evidence or cross examination will not apply, the hearing panel may ask questions of speakers and a verbatim transcript of the proceedings will be prepared and made a part of the rulemaking record. We also will post the transcript on MSHA's Home Page at *http://www.msha.gov*, on the *Asbestos Single Source Page*.

Speakers and other attendees may present information to the MSHA panel for inclusion in the rulemaking record. We will accept written comments and data for the record from any interested party, including those not presenting oral statements. The post-hearing comment period will close on November 21, 2005, 30 days after the last public hearing.

C. Executive Summary

In March of 2001, the U.S. Department of Labor, Office of the Inspector General (OIG) published a report evaluating MSHA's enforcement actions at the vermiculite mine in Libby, Montana. The widespread asbestos contamination at this mine and surrounding community, together with the prevalence of asbestos-related illnesses and fatalities among persons living in this community, attracted press and public attention, which prompted the OIG investigation and report. The OIG found that MSHA had conducted regular inspections and personal exposure sampling at the mine, as required by the Federal Mine Safety and Health Act of 1977 (Mine Act). The OIG report stated, ''We do not believe that more inspections or sampling would have prevented the current situation in Libby.'' The OIG made five recommendations to MSHA; two of which we implemented immediately. The remaining recommendations are listed below:

- Lower the existing permissible exposure limit (PEL) for asbestos to a more protective level.
- Use transmission electron microscopy (TEM) instead of phase contrast microscopy (PCM) in the initial analysis of fiber samples that may contain asbestos.
- Implement special safety requirements to address take-home contamination.

In response to the OIG's recommendations, MSHA published an advance notice of proposed rulemaking (ANPRM) on March 29, 2002 (67 FR 15134). MSHA also held seven public meetings around the country to seek input and obtain public comment on how best to protect miners from exposure to asbestos.

Following review of all public comments and testimony taken at the public meetings, and relying on OSHA's 1986 asbestos risk assessment, we determined that it is appropriate to propose reducing the PELs for asbestos and clarify criteria for asbestos sample analysis. To enhance the health and safety of miners, we are proposing to lower the existing 8-hour, time-weighted average (TWA) PEL of 2.0 f/cc to 0.1 f/cc, and to lower the short-term limit from 10.0 f/cc over a minimum sampling time of 15 minutes to an excursion limit PEL of 1.0 f/cc over a minimum sampling time of 30 minutes. To clarify the criteria for the analytical method in our existing standards, we are proposing to incorporate a reference to Appendix A of OSHA's asbestos standard (29 CFR 1910.1001). Appendix A specifies basic elements of a PCM method for analyzing airborne asbestos samples. It includes the same analytical elements specified in our existing standards and allows MSHA's use of other methods that meet the statistical equivalency criteria in OSHA's asbestos standard.

The scope of this proposed rule, therefore, is limited to lowering the permissible exposure limits, an issue raised by the OIG; incorporating Appendix A of OSHA's asbestos standard for the analysis of our asbestos samples; and making several nonsubstantive conforming amendments to our existing rule language. After considering several regulatory approaches to prevent take-home contamination, we determined that non-regulatory measures could adequately address this potential hazard.

D. Abbreviations and Acronyms

As a quick reference, we list below some of the abbreviations used in the preamble.

29 CFR Title 29, *Code of Federal Regulations*
30 CFR Title 30, *Code of Federal Regulations*
AFL–CIO American Federation of Labor and Congress of Industrial Organizations
ATSDR Agency for Toxic Substances and Disease Registry, Centers for Disease Control and Prevention, U.S. Department of Health and Human Services
Bureau former Bureau of Mines, U.S. Department of the Interior
cc cubic centimeter (cm^3) = milliliter (mL)
EPA U.S. Environmental Protection Agency
f fiber(s)
FR **Federal Register**
Lpm liter(s) per minute
MESA former Mining Enforcement and Safety Administration, U.S. Department of the Interior (predecessor to MSHA)
MSHA Mine Safety and Health Administration, U.S. Department of Labor
mm millimeter = 1 thousandth of a meter (0.001 m)
mL milliliter = 1 thousandth of a liter (0.001 L) = cubic centimeter
NIOSH National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention, U.S. Department of Health and Human Services
OIG Office of the Inspector General, U.S. Department of Labor
OSHA Occupational Safety and Health Administration, U.S. Department of Labor
PCM phase contrast microscopy
PEL permissible exposure limit
PLM polarized light microscopy
STEL short-term exposure limit
SWA shift-weighted average concentration
TEM transmission electron microscopy
TWA time-weighted average concentration
µm micron = micrometer = 1 millionth of a meter (0.000001 m)
USGS U.S. Geological Survey, U.S. Department of the Interior

II. Background

A. Scope of Proposed Rule

This proposed rule would apply to metal and nonmetal mines, surface coal mines, and the surface areas of underground coal mines. Because asbestos from any source poses a health hazard to miners if they inhale it, the proposed rule would cover all miners exposed to asbestos whether naturally occurring or contained in building materials, in other manufactured products at the mine, or in mine waste or tailings.

The National Institute for Occupational Safety and Health (NIOSH) and other research organizations and scientists (see Table VI–5) have observed the occurrence of cancers and asbestosis among metal and nonmetal miners involved in the mining and milling of commodities that contain asbestos. For this reason, our primary focus at metal and nonmetal mines is on asbestos in pockets or veins of mined commodities. Historically, there has been no evidence of coal miners encountering naturally occurring asbestos.[1] The more likely exposure to asbestos in coal mining would occur from introduced asbestos-containing products, such as asbestos-containing building materials (ACBM) in surface structures.

In 2000, the OIG investigated MSHA's activities at the vermiculite mine in Libby, Montana. The OIG's conclusions and recommendations, discussed later, are consistent with MSHA's observations and concerns that—

- Miners are exposed to asbestos at mining operations where the ore body or surrounding rock contains asbestos;
- Miners are potentially exposed to airborne asbestos at mine facilities with installed asbestos-containing material when it is disturbed during maintenance, construction, renovation, or demolition activities; and
- Family and community are potentially exposed if miners take asbestos home on their person, clothes, or equipment, or in their vehicle.

We developed this proposed rule based on our experience with asbestos, our assessment of the health risks, the OIG's recommendations, and public comments on MSHA's ANPRM addressing the OIG's recommendations. We received numerous comments in response to the ANPRM and at the

[1] Personal communication with Professor Kot Unrug, Department of Mining Engineering, University of Kentucky, on November 14, 2003; and with Syd S. Peng, Chairman, Department of Mining Engineering, College of Engineering and Mineral Resources, West Virginia University, the week of October 24, 2003.

public meetings, some of which suggested or supported additional requirements beyond those addressed by the OIG. We believe that the comments to the ANPRM do not justify an expansion of the scope, at this time, beyond the recommendations specifically raised in the OIG report.

On the contrary, we believe that our data support a narrowed scope in that we specifically are not proposing two of the OIG's recommendations, *i.e.*, routine use of TEM for the initial analysis of exposure samples and promulgation of standards to prevent take-home contamination. We are proposing, however, to lower our permissible exposure limits.

We have decided not to propose to change our existing definition of asbestos in this rulemaking. There are several reasons for this.

First, this rulemaking is limited in scope. We believe that a 20-fold lowering of the exposure limits, as we have proposed, together with our enhanced measures to educate the mining community about the asbestos hazard in mining, would increase protection for miners and help avoid the future development of situations such as that in Libby, Montana.

Second, interest in the definition of asbestos extends to numerous agencies in Federal, state, and local governments. Our existing definition is consistent with several Federal agencies' regulatory provisions, including OSHA's. Changing the definition would require considerable interagency consultation and coordination; additional scientific evaluation; and an unnecessary delay in providing miners access to the benefits of this proposed rule.

Third, we believe another Libby-like mining operation would not exist today because such a business arguably would not be economically viable. If a mine's ore contained significant amounts of asbestos-like minerals, there is a strong likelihood of potential liability risks, both from customers and workers, and the possibility that the mine's product would be commercially unmarketable. Such market forces are likely to compel mining companies of all sizes to sample the ore for the presence of hazardous fibrous minerals before purchasing or developing a mine site. In our view, these commercial reasons make it unlikely that a new Libby-like mining condition would arise in the future.

B. Where Asbestos Is Found at Mining Operations

Asbestos is no longer mined as a commodity in the United States. Even so, veins, pockets, or intrusions of asbestos have been found in other ores in specific geographic regions, primarily in metamorphic or igneous rock.[2] Although less common, it is not impossible to find asbestos in sedimentary rock, soil, and air from the weathering or abrasion of other asbestos-bearing rock.[3] The areas where asbestos may be located can be determined from an understanding of the mineralogy of asbestos and the geology required for its formation. In some cases, visual inspection can detect the presence of asbestos. MSHA experience indicates that miners may encounter asbestos during the mining of a number of mineral commodities,[4] such as talc, limestone and dolomite, vermiculite, wollastonite, banded ironstone and taconite, lizardite, and antigorite. Not all mines of a specific commodity contain asbestos in the ore, however, and the mines that do have asbestos in the ore may encounter it rarely.

Asbestos also is contained in building materials and other manufactured products found at mines. Contrary to the common public perception, asbestos is not banned in the United States.[5] The U.S. Geological Survey (USGS) estimates that about 13,000 metric tons (29 million pounds) of asbestos were used in product manufacturing in the United States during 2001.[6] In addition to domestic manufacturing, the United States continues to import products that contain asbestos. Asbestos may be used for a number of purposes at a mine including insulation; reinforcement of cements; reinforcement of floor, wall, and building tile; and automotive clutch and brake linings.[7] If asbestos is present at the mine, miners in the vicinity are potentially at increased risk from asbestos exposure, regardless of whether or not they are actually working with asbestos.

C. Asbestos Minerals

To understand the scientific literature, information about asbestos, and the issues raised in the public comments, it is important to understand the terminology used to describe minerals, asbestos, and fibers. This section briefly reviews a number of key terms and concepts associated with asbestos that we use in discussing this proposed rule.

1. Mineralogical Classification and Mineral Names

The terminology used to refer to how minerals form and how they are named is complex. A mineral's physical properties, composition, crystalline structure, and morphology determine its classification. Asbestos minerals belong to either the serpentine (sheet silicate) or the amphibole (double-chain silicate) family of minerals. Most of the difficulties in classifying minerals as asbestos have involved the amphiboles. The formation of a particular mineral (chemical composition) or habit (morphology, crystalline structure) occurs gradually and may be incomplete, producing intermediate minerals that are difficult to classify. In the past, there have been several different systems used to classify and name minerals that, in some instances, led to inconsistent terminology and classification. Currently, there is no single, universally accepted system for naming minerals.

Asbestos is a commercial term used to describe certain naturally occurring, hydrated silicate minerals. Several Federal agencies have regulations that focus on these minerals. The properties of asbestos that give it commercial value include low electrical and thermal conductivity, chemical and crystalline stability and durability, high tensile strength, flexibility, and friability. Much of the existing health risk data for asbestos uses commercial mineral terminology. Meeker *et al.* (2003) recognized the confusion associated with asbestos nomenclature, stating—

> Within much of the existing asbestos literature, mineral names are not applied in a uniform manner and are not all consistent with presently accepted mineralogical nomenclature and definitions.

a. *Variations in Mineral Morphology.*

There are many types of crystal habits, such as fibrous, acicular (slender and needle-like), massive (irregular form), and columnar (stout and column-like). The morphology of a mineral may not fit a precise definition. For example, Meeker *et al.* (2003) state that the Libby amphiboles contain ''a complete range of morphologies from prismatic crystals to asbestiform fibers.'' Some minerals crystallize in more than one habit. Some minerals, which can form in different habits, have a different name for each habit; others do not.[8] For example, crocidolite is the name for the asbestiform habit and riebeckite is the name for the same mineral in its nonasbestiform habit. Tremolite and actinolite do not have different names

[2] MSHA (Bank), 1980.

[3] USGS, 1995.

[4] Roggli *et al.*, 2002; Selden *et al.*, 2001; Amandus *et al.*, Part I, 1987; Amandus *et al.*, Part III, 1987; Amandus and Wheeler, Part II, 1987.

[5] GETF Report, pp. 12–13, 2003.

[6] USGS (Virta), p. 28, 2003.

[7] Lemen, 2003; Paustenbach *et al.*, 2003.

[8] Reger and Morgan, 1990; ATSDR, p. 138, 2001.

depending on habit; therefore, to distinguish between the different habits, the descriptive term ''asbestiform'' or ''asbestos'' is added to the mineral's name. If the identifying, descriptive term is not used with the mineral name, misunderstandings or mistakes may occur.

b. *Variations in Mineral Composition.*

Atoms similar in size and valence state can replace each other within a mineral's crystal lattice, resulting in the formation of a different mineral in the same mineral series. This process is gradual and can occur to a different extent in the same mineral depending on the geological conditions during its formation. For example, tremolite contains magnesium, but no (or little) iron, and holds an end member position in its mineral series. Iron atoms can replace the magnesium atoms in tremolite and the resulting mineral may then be called actinolite. The quantity of iron needed before the mineral is called actinolite varies depending on the mineral classification scheme used. Another example is winchite, which is an intermediate member of the tremolite-glaucophane series, as well as an end member in its own sodic-calcic series.[9] Given the chemical similarity within the series, winchite [$(NaCa)Mg_4(Al,Fe^{3+})Si_8O_{22}(OH)_2$] often has been reported as tremolite [$Ca_2Mg_5Si_8O_{22}(OH)_2$].

A specific rock formation may contain a continuum of minerals from one end member of a series to the other end member, creating a solid solution of intermediate minerals. These intermediate minerals are sometimes given names, while at other times they are not. Often, when the exact chemical composition is not determined or determined to be a number of different intermediate minerals, the mineral is named by one or more of its end members, such as tremolite-actinolite or cummingtonite-grunerite. The fibrous amphiboles in the Libby ore body, for example, contain both end members and several intermediate minerals. Meeker *et al.* (2003) state that—

> The variability of compositions on the micrometer scale can produce single fibrous particles that can have different amphibole names at different points of the particle.

A mineral may also undergo transition to a different mineral series. Kelse and Thompson (1989), Ross (1978), and USGS (Virta, 2002) have commented on the chemical transition of anthophyllite to talc. Stewart and Lee (1992) stated that fibrous talc might contain intermediate particles not easily differentiated from asbestos. In the context of systems for naming and classifying fibrous amphiboles, Meeker *et al.* (2003) state that the regulatory literature often gives nominal compositions for a mineral without specifying chemical boundaries.

2. Differentiating Asbestiform and Nonasbestiform Habit

In the asbestiform habit, mineral crystals grow forming long, thread-like fibers. When pressure is applied to an asbestos fiber, it bends much like a wire, rather than breaks. Fibers can separate into ''fibrils'' of a smaller diameter (often less than 0.5 μm). This effect is referred to as ''polyfilamentous,'' and should be viewed as one of the most important characteristics of asbestos. Appendix A of the Environmental Protection Agency's (EPA's) *Method for the Determination of Asbestos in Bulk Building Materials*[10] defines asbestiform as follows:

> * * * a mineral that is like asbestos, *i.e.*, crystallized with the habit [morphology] of asbestos. Some asbestiform minerals may lack the properties which make asbestos commercially valuable, such as long fiber length and high tensile strength. With the light microscope, the asbestiform habit is generally recognized by the following characteristics:
>
> Mean aspect [length to width] ratios ranging from 20:1 to 100:1 or higher for fibers longer than 5 micrometers. Aspect ratios should be determined for fibers, not bundles.
>
> Very thin fibrils, usually less than 0.5 micrometers in width, and two or more of the following:
>
> —Parallel fibers occurring in bundles,
> —Fiber bundles displaying splayed ends,
> —Matted masses of individual fibers, and/or
> —Fibers showing curvature.

In the nonasbestiform habit, mineral crystals do not grow in long thin fibers. They grow in a more massive habit. For example, a long thin crystal may not be polyfilamentous nor possess high tensile strength and flexibility, but may break rather than bend. When pressure is applied, the nonasbestiform crystals fracture easily into prismatic particles, which are called cleavage fragments because they result from the particle's breaking or cleavage, rather than the crystal's formation or growth. Some particles are acicular (needle shaped), and stair-step cleavage along the edges of some particles is common.

Cleavage fragments may be formed when nonfibrous amphibole minerals are crushed, as may occur in mining and milling operations. Cleavage fragments are not asbestiform and do not fall within our definition of asbestos. For some minerals, distinguishing between asbestiform fibers and cleavage fragments in certain size ranges is difficult or impossible when only a small number of structures are available for review, as opposed to a representative population. Meeker *et al.* (2003) states that it is often difficult or impossible to determine differences between acicular cleavage fragments and asbestiform mineral fibers on an individual fiber basis. A determination as to whether a mineral is asbestiform or not must be made, where possible, by applying existing analytical methods. Although we have received comments regarding the hazards associated with cleavage fragments, we do not intend to modify our existing definition of asbestos with this rulemaking.

III. History of Asbestos Regulation

When Federal agencies responsible for occupational safety and health began to regulate occupational exposure to asbestos, studies had already established that the inhalation of asbestos fibers was a major cause of disability and death among exposed workers. The intent of these first asbestos rules was to protect workers from developing asbestosis.[11]

A. MSHA's Asbestos Standards for Mining

1967–1969. In 1967, under the former Bureau of Mines, predecessor to the Mining Enforcement and Safety Administration (MESA) and then MSHA, the standard for asbestos exposure in mining was an 8-hour, time-weighted average (TWA) PEL of 5 mppcf (million particles per cubic foot of air). In 1969, the Bureau promulgated a 2 mppcf and 12 f/mL (fibers per milliliter) standard.

1974–1976. In 1974, MESA promulgated a 5 f/mL standard for asbestos exposure in metal and nonmetal mines (39 FR 24316). In 1976, MESA promulgated a 2 f/cc standard (41 FR 10223) for asbestos exposure in surface areas of coal mines. We retained these standards under the authority of the Federal Mine Safety and Health Act of 1977.

1978. In November 1978, we promulgated a 2 f/mL standard for asbestos exposure in metal and nonmetal mines (43 FR 54064). Since then, we have made only nonsubstantive changes to our asbestos standards, *e.g.*, renumbering the section of the standard in 30 CFR.

MSHA's existing standards for asbestos at metal and nonmetal mines at 30 CFR 56/57.5001 state,

[9] Leake *et al.*, p. 222, 1997.

[10] EPA, 1993.

[11] GETF Report, p. 33, 2003.

(b) The 8-hour time-weighted average airborne concentration of asbestos dust to which employees are exposed shall not exceed 2 fibers per milliliter greater than 5 microns in length, as determined by the membrane filter method at 400–450 magnification (4 millimeter objective) phase contrast illumination. No employees shall be exposed at any time to airborne concentrations of asbestos fibers in excess of 10 fibers longer than 5 micrometers, per milliliter of air, as determined by the membrane filter method over a minimum sampling time of 15 minutes. ''Asbestos'' is a generic term for a number of hydrated silicates that, when crushed or processed, separate into flexible fibers made up of fibrils. Although there are many asbestos minerals, the term ''asbestos'' as used herein is limited to the following minerals: chrysotile, Amosite, crocidolite, anthophylite asbestos, tremolite asbestos, and actinolite asbestos.

The existing standard for asbestos at surface coal mines and surface work areas of underground coal mines at 30 CFR 71.702 states,

(a) The 8-hour average airborne concentration of asbestos dust to which miners are exposed shall not exceed two fibers per cubic centimeter of air. Exposure to a concentration greater than two fibers per cubic centimeter of air, but not to exceed 10 fibers per cubic centimeter of air, may be permitted for a total of 1 hour each 8-hour day. As used in this subpart, the term asbestos means chrysotile, amosite, crocidolite, anthophylite asbestos, tremolite asbestos, and actinolite asbestos but does not include nonfibrous or nonasbestiform minerals.

(b) The determination of fiber concentration shall be made by counting all fibers longer than 5 micrometers in length and with a length-to-width ratio of at least 3 to 1 in at least 20 randomly selected fields using phase contrast microscopy at 400–450 magnification.

1989. In 1989, as part of our Air Quality rulemaking, we proposed to lower the full-shift exposure limit for asbestos from 2 f/cc to 0.2 f/cc to address the excessive risk quantified in the Occupational Safety and Health Administration's (OSHA's) 1986 asbestos rule (54 FR 35760). The Air Quality rulemaking, however, was withdrawn on September 26, 2002 (67 FR 60611). MSHA has not reinstated the Air Quality rulemaking at this time.

B. OSHA's Asbestos Standards for General Industry and Construction

1971–1972. The initial promulgation of OSHA standards on May 29, 1971 (36 FR 10466) included a 12 f/cc PEL for asbestos. Then, on December 7, 1971, in response to a petition by the Industrial Union Department of the AFL-CIO, OSHA issued an emergency temporary standard (ETS) on asbestos that established an 8-hour, TWA PEL of 5 f/cc and a peak exposure level (ceiling limit) of 10 f/cc. In June 1972, OSHA promulgated these limits in a final rule.

1975. In October 1975, OSHA proposed to revise its asbestos standard by reducing the 8-hour, TWA PEL to 0.5 f/cc with a ceiling limit of 5 f/cc for 15 minutes (40 FR 47652). OSHA stated that sufficient medical and scientific evidence had accumulated to warrant the designation of asbestos as a human carcinogen and that advances in monitoring and protective technology made re-examination of the standard appropriate. The final rule, however, reduced OSHA's 8-hour, TWA asbestos PEL to 2 f/cc due to feasibility concerns. This limit remained in effect until OSHA revised it in 1986.

1983–1986. On November 4, 1983, OSHA published another emergency temporary standard (ETS) for asbestos (48 FR 51086), which would have lowered the 8-hour, TWA PEL from 2 f/cc to 0.5 f/cc. The Asbestos Information Association challenged the ETS in the U.S. Court of Appeals for the 5th Circuit. On March 7, 1984, ruling on *Asbestos Information Association/North America* v. *OSHA* (727 F.2d 415, 1984), the Court invalidated the ETS. Subsequent to this decision, OSHA published a proposed rule (49 FR 14116) that, together with the ETS, proposed two alternatives for lowering the 8-hour, TWA PEL: 0.2 f/cc and 0.5 f/cc.

On June 17, 1986, OSHA issued comprehensive asbestos standards (51 FR 22612) governing occupational exposure to asbestos in general industry workplaces (29 CFR 1910.1001), construction workplaces (29 CFR 1926.1101), and shipyards (29 CFR 1915.1001). The separate standards shared the same asbestos PEL and most ancillary requirements. These standards reduced OSHA's 8-hour, TWA PEL to 0.2 f/cc from the previous 2 f/cc limit. OSHA added specific provisions in the construction standard to cover unique hazards relating to asbestos abatement and demolition jobs.

Although tremolite, actinolite, and anthophyllite exist in different forms, OSHA determined that all forms of these minerals would continue to be regulated. Following promulgation of the rule, several parties requested an administrative stay of the standard claiming that OSHA improperly included nonasbestiform minerals. A temporary stay was granted and OSHA initiated rulemaking to remove the nonasbestiform types of these minerals from the scope of the asbestos standards.

1988. Several major participants in OSHA's rulemaking challenged various provisions of the 1986 revised standards. In *Building Construction Trades Division (BCTD), AFL-CIO* v. *Brock* (838 F.2d 1258, 1988), the U.S. Court of Appeals for the District of Columbia upheld most of the challenged provisions, but remanded certain issues to OSHA for reconsideration. In partial response, on September 14, 1988, OSHA promulgated an excursion limit of 1 f/cc for asbestos as measured over a 30-minute sampling period (53 FR 35610).

1992. OSHA's 1986 standards had applied to occupational exposure to nonasbestiform actinolite, tremolite, and anthophylite. On June 8, 1992, OSHA deleted the nonasbestiform types of these minerals from the scope of its asbestos standards. In evaluating the record, OSHA found (57 FR 24310–24311) insufficient evidence that nonasbestiform actinolite, tremolite, and anthophyllite present ''a risk similar in kind and extent'' to their asbestiform counterparts. Additionally, the evidence did not show that OSHA's removal of the nonasbestiform types of these three minerals from its asbestos standard ''will pose a significant risk to exposed employees.''

1994. On August 10, 1994, OSHA published a final rule (59 FR 40964) that lowered its 8-hour, TWA PEL for asbestos to 0.1 f/cc and retained the 1 f/cc excursion limit as measured over 30 minutes.

C. Other Federal Agencies Regulating Asbestos

Because the health hazards of exposure to asbestos are well recognized, it is highly regulated. OSHA and MSHA have the primary authority to regulate occupational exposures to asbestos. EPA regulates asbestos exposure of state and local government workers in those states that do not have an OSHA State Plan covering them. A number of other Federal agencies, primarily EPA and the Consumer Product Safety Commission (CPSC), regulate non-occupational asbestos exposures. For example, CPSC regulates asbestos in consumer products, such as patching compounds, under the Federal Hazardous Substances Act.

EPA regulates asbestos in air and materials. EPA's activities have focused on environmental issues and the public health by reducing emissions of hazardous gases and dusts from large industrial sources, such as taconite ore processing,[12] and the cleanup of contaminated waste sites. EPA also regulates asbestos in schools. The mining and processing of vermiculite in Libby, Montana, resulted in the spread

[12] EPA (68 FR 61868), 2003.

of asbestos to numerous homes, schools, and businesses throughout the town. In November 1999, EPA responded to a request to study the environmental contamination in the town of Libby and widespread illnesses and death among its residents. In October 2002, EPA designated the area as a Superfund site.

D. Other Asbestos-Related Activities

There have been increasing numbers of studies on asbestos and its hazards over the past 40 years. These efforts encompass government, industry, and academia on a local, national, and international scale. Government agencies and scientific groups in the United States, such as the National Institute for Occupational Safety and Health (NIOSH), the Agency for Toxic Substances and Disease Registry (ATSDR), the American Conference of Governmental Industrial Hygienists (ACGIH), and the National Toxicology Program (NTP), have addressed issues involving carcinogens, such as asbestos. Organizations from other countries, such as the United Kingdom (Health and Safety Executive) and Germany (Deutche Forschungsgemeinschaft), also have addressed occupational exposure to asbestos and other carcinogens. Similarly, the International Agency for Research on Cancer (IARC) has published a monograph on asbestos that summarizes evidence of its carcinogenicity.[13]

1. Interagency Asbestos Work Group (IAWG)

OSHA's and EPA's overlapping responsibilities and common interest in addressing asbestos hazards led to the formation of the IAWG. Participating Federal agencies include EPA, OSHA, CPSC, MSHA, NIOSH, ATSDR, USGS, and the National Institute of Standards and Technology (NIST). This work group of government agencies facilitates the sharing of information and coordination of activities, including regulatory activities, environmental assessment, technical assistance, consumer protection, and developments in environmental analysis of contaminants. The IAWG also seeks to harmonize the policies, procedures, and enforcement activities of the participating agencies, thus minimizing or eliminating potential conflicts for the regulated community. For example, the IAWG is currently discussing the Federal definition of asbestos.

2. National Institute for Occupational Safety and Health (NIOSH)

The Workers' Family Protection Act of 1992 (29 U.S.C. 671A) directed NIOSH to study contamination of workers' homes by hazardous substances, including asbestos, transported from the workplace. ATSDR, EPA, OSHA, MSHA, the U.S. Department of Energy (DOE), and the Centers for Disease Control and Prevention (CDC) assisted NIOSH in conducting the study. For this proposed rule we focused on the asbestos-related results of these studies.

NIOSH (1995) published its study results in a *Report to Congress on Workers' Home Contamination Study Conducted under the Workers' Family Protection Act*. This report summarizes incidents of home contamination, including the health consequences, sources, and levels of contamination. The study documents cases of asbestos reaching workers' homes in 36 states in the United States and in 28 other countries. These cases covered a wide variety of materials, industries, and occupations. The means by which hazardous substances reached workers' homes and families included taking the substance home on the worker's body, clothing, tools, and equipment; cottage industries (*i.e.*, work performed on home property); and family visits to the workplace. In an effort to reach employers and workers, NIOSH (1997) published its recommendations in *Protect Your Family: Reduce Contamination at Home*. This pamphlet summarizes the NIOSH study and provides recommendations to prevent this contamination.

3. Agency for Toxic Substances and Disease Registry (ATSDR)

The Superfund Amendments and Reauthorization Act of 1986 (SARA) directed ATSDR to prepare toxicological profiles for hazardous substances most commonly found at specific waste sites. ATSDR and EPA determined which hazardous substances pose the most significant potential threat to human health and targeted them for study. Asbestos is one of these targeted substances. ATSDR published one of the most current toxicological profiles for asbestos in September 2001, which was an update of an earlier asbestos profile.

In October 2002, ATSDR sponsored a meeting of expert panelists who presented their evaluation of state-of-the-art research concerning the relationship between fiber length and the toxicity of asbestos and synthetic vitreous fibers. We have reviewed the evidence and arguments presented in the updated asbestos toxicological profile and the meeting proceedings and have discussed this information in this preamble, where appropriate.

E. U.S. Department of Labor, Office of the Inspector General (OIG)

In November 1999, a Seattle newspaper published a series of articles on the unusually high incidence of asbestos-related illnesses and fatalities among individuals who had lived in Libby, Montana. There was extensive national media attention surrounding the widespread environmental contamination and asbestos-related deaths in Libby. Dust and construction materials from the nearby vermiculite mine were the alleged cause. This mine had produced about 90 percent of the world's supply of vermiculite from 1924 until 1992.

Because MSHA had jurisdiction over the mine for two decades before it closed, the OIG investigated MSHA's enforcement actions at the mine. The OIG confirmed that the processing of vermiculite at the mine exposed miners to asbestos. The miners then, inadvertently, had carried the asbestos home on their clothes and in their personal vehicles.[14] In doing this, the miners continued to expose themselves and family members.

1. OIG Report on MSHA's Handling of Inspections at the W.R. Grace & Company Mine in Libby, Montana

The OIG published its findings and recommendations in a report dated March 22, 2001. The OIG found that MSHA had appropriately conducted regular inspections and personal exposure sampling at the Libby mine and that there were no samples exceeding the 2.0 f/cc PEL for the 10 years prior to the mine closing in 1992. The OIG concluded, ''We do not believe that more inspections or sampling would have prevented the current situation in Libby.'' The OIG stated its belief that there is a need for MSHA to lower its asbestos PEL.

In its report, the OIG supported the development and implementation of control measures for asbestos and vermiculite mining and milling. They also made recommendations for improving our effectiveness in controlling this hazard. This proposed rule addresses our responses to several of the OIG's recommendations.

2. MSHA's Libby, Montana Experience

W.R. Grace acquired the vermiculite mine in Libby, Montana, in 1963. At that time, the amphibole in the

[13] IARC, 1987.

[14] Weis *et al.*, 2001.

vermiculite was called tremolite, soda tremolite, soda-rich tremolite, or richterite, and researchers had already linked the mine dust to respiratory disease.[15] The suggested exposure limit for asbestos in mining was much higher than current limits. The federal standard for asbestos in mining dropped from 5 mppcf (about 30 f/mL) in 1967 to 2 f/mL in 1978. When MESA (predecessor agency to MSHA) began inspecting the operation, the exposure limit for asbestos was 5 f/mL.

The mine operator, Federal mine inspectors, and representatives of the U.S. Public Health Service [part of the Centers for Disease Control and Prevention (CDC)] routinely sampled for asbestos at the Libby mine, starting before the mine switched to wet processing in 1974, and continued sampling periodically until the mine closed in 1992. MSHA sampling at the Libby mine found no exposures exceeding the 5.0 f/cc asbestos PEL from 1975 through 1978, and only a few over the 2.0 f/cc asbestos PEL from 1979 through 1986. Almost all the samples would have exceeded the 0.1 f/cc proposed limit. Miners' exposures continued to decrease and more recent sampling since 1986 found few exposures exceeding the OSHA PEL of 0.1 f/cc.

The results from our personal exposure sampling at the Libby mine included many of the fibrous amphiboles present. In addition, the results from TEM analysis of the air samples characterized the mineralogy of the airborne fibers as tremolite and did not distinguish between the species of amphiboles. Further characterization of the amphibole minerals using Scanning Electron Microscopy/Energy Dispersive X-ray Spectroscopy technology shows proportions of about 84 percent winchite, 11 percent richterite, and 6 percent tremolite.[16]

As early as 1980, MSHA had requested that NIOSH investigate health problems at all vermiculite operations, including the mine and mill in Libby, Montana. NIOSH published its study results in a series of three papers (Amandus *et al.*, Part I, 1987; Amandus and Wheeler, Part II, 1987; Amandus *et al.*, Part III, 1987). The study of Amandus *et al.* (Part I, 1987) along with that of McDonald *et al.* (1986) found that, historically, the highest exposures to fibers at the Libby operation had occurred in the mill and that exposures had decreased between the 1960's and 1970's. McDonald *et al.* (1986) reported—

> In 1974, the old dry and wet mills were closed and the ore was processed in a new mill built nearby which operated on an entirely wet basis in which separation was made by vibrating screens, Humphrey separators, and flotation.

McDonald *et al.* (1986) and Amandus and Wheeler (Part II, 1987) also showed that, even at reduced exposure levels, there was still increased risk of lung cancer among the Libby miners and millers.

3. MSHA's Efforts To Minimize Asbestos Take-Home Contamination

''Take-home'' contamination is contamination of workers' homes or vehicles by hazardous substances transported from the workplace. As discussed previously in this preamble, the widespread asbestos-related disease among the residents of Libby, Montana, was attributed, in part, to take-home contamination from the vermiculite mining and milling operation in that town. The OIG report on MSHA's activities recommended that we promulgate special safety standards similar to those in our 1989 proposed Air Quality rule (54 FR 35760) to address take-home contamination.

In our 1989 Air Quality proposed rule, we had proposed that miners wear protective clothing and other personal protective equipment before entering areas containing asbestos. Our Air Quality proposed rule also would have required miners to remove their protective clothing and store them in adequate containers to be disposed of or decontaminated by the mine operator. These proposed requirements were similar to those in OSHA's asbestos standard and to NIOSH's recommendations.

In March 2000, shortly after the series of articles on asbestos-related illnesses and deaths in Libby, Montana, we issued a Program Information Bulletin (PIB No. P00–3) about asbestos. The PIB served to remind the mining industry of the potential health hazards from exposure to airborne asbestos fibers and to raise awareness about potential asbestos exposure for miners, their families, and their communities. At that time, we also issued a Health Hazard Information Card (No. 21) about asbestos for distribution to miners to raise their awareness about the health hazards related to asbestos exposure.

The PIB included information about asbestos, its carcinogenic and other significant health effects, how miners could be exposed, where asbestos occurs naturally on mining property, and what types of commercial products may contain asbestos. It included recommendations to help mine operators reduce miners' exposures, to prevent or minimize take-home contamination, and for the selection and use of respiratory protection. The PIB also urged mine operators to minimize exposures, to improve controls, and to train miners, listing specific training topics as essential for miners potentially exposed to asbestos.

During this same period, 2000 to 2003, we conducted an asbestos awareness campaign and increased asbestos sampling. Section VII.D of this preamble contains an additional discussion of measures to prevent asbestos ''take-home'' contamination.

We have decided not to pursue a regulatory approach to minimizing asbestos ''take-home'' contamination. Based on the existing levels of asbestos exposures in the mining industry, comments on our 2002 ANPRM, and testimony at the subsequent public meetings, we have determined that a non-regulatory approach would be effective in minimizing asbestos take-home contamination from mining operations.

4. Training Inspectors to Recognize and Sample for Asbestos

The OIG recommended that we increase MSHA inspectors' skills for providing asbestos compliance assistance to mine operators. In response, we developed a half-day multimedia training program that includes the following:

- A PowerPoint-based training presentation that examines MSHA's procedures for air and bulk asbestos sampling.
- An updated ''Chapter 8—Asbestos Fibers'' from the *Metal and Nonmetal Health Inspection and Procedures Handbook* that serves as a text for the training sessions.
- A ''hands-on'' segment that allows the inspectors to examine asbestos and asbestiform rock samples and the equipment used for bulk sampling, and that provides the inspectors instruction and practice in assembling and calibrating asbestos fiber air sampling apparatus.

We gave this asbestos training to journeymen inspectors from March 2002 through April 2003, and added it to the training program for entry-level inspectors.

IV. Health Effects of Asbestos Exposure

The health hazards from exposure to asbestos were discussed extensively in the preamble to OSHA's 1983 final rule (51 FR 22615). Subsequently, researchers have confirmed and

[15] McDonald *et al.*, 1986; Meeker *et al.*, 2003; Peipins *et al.*, 2003.

[16] Meeker *et al.*, 2003

increased our knowledge of these hazards. Exposures in occupational and environmental settings are generally due to inhalation, although some asbestos may be absorbed through ingestion. While the part of the body most likely affected (target organ) is the lung, adverse health effects may extend to the linings of the chest, abdominal, and pelvic cavities, and the gastrointestinal tract. The damage following chronic exposure to asbestos is cumulative and irreversible. Workplace exposures to asbestos may be chronic, continuing for many years. The symptoms of asbestos-related adverse health effects may not become evident for 20 or more years after first exposure (latency period).

A. Summary of Asbestos Health Hazards

This section presents an overview of human health effects from exposure to asbestos. We are proposing to use OSHA's 1986 risk assessment to estimate the risk from asbestos exposures in mining. OSHA's risk assessment has withstood legal scrutiny and the more recent studies discussed later in this preamble support it. MSHA has placed OSHA's risk assessment in the asbestos rulemaking record. It can also be found at *http://www.osha.gov*.

Studies first identified health problems associated with occupational exposure to asbestos in the early 20th century among workers involved in the manufacturing or use of asbestos-containing products.[17] Early studies identified the inhalation of asbestos as the cause of asbestosis, a slowly progressive disease that produces lung scarring and loss of lung elasticity. Studies also found that asbestos caused lung and several other types of cancer. For example, mesotheliomas, rare cancers of the lining of the chest or abdominal cavities, are almost exclusively attributable to asbestos exposure. Once diagnosed, they are rapidly fatal. Asbestos-related diseases have long latency periods, commonly not producing symptoms for 20 to 30 years following initial exposure.

In the late 1960's, scientists correlated phase contrast microscopy fiber counting methods with the earlier types of dust measurements. This procedure provided a means to estimate earlier workers' asbestos exposures and enabled researchers to develop a dose-response relationship with the occurrence of disease. The British Occupational Hygiene Society reported[18] that a worker exposed to 100 fiber-years per cubic centimeter (*e.g.*, 50 years at 2 f/cc, 25 years at 4 f/cc, 10 years at 10 f/cc) would have a 1 percent risk of developing early signs of asbestosis. The correlation of exposure levels with the disease experience of populations of exposed workers provided a basis for setting an occupational exposure limit for asbestos measured by the concentration of the fibers in air.

As mentioned previously, the hazardous effects from exposure to asbestos are now well known. For this reason, our discussion in this section will focus on the results of the more recent studies and literature reviews, those published since the publication of OSHA's risk assessment, and those involving miners. One such review by Tweedale (2002) stated,

> Asbestos has become the leading cause of occupational related cancer death, and the second most fatal manufactured carcinogen (after tobacco). In the public's mind, asbestos has been a hazard since the 1960s and 1970s. However, the knowledge that the material was a mortal health hazard dates back at least a century, and its carcinogenic properties have been appreciated for more than 50 years.

Greenberg (2003) also published a recent review of the biological effects of asbestos and provided a historical perspective similar to that of Tweedale.

The three most commonly described adverse health effects associated with asbestos exposure are lung cancer, mesotheliomas, and pulmonary fibrosis (*i.e.*, asbestosis). OSHA, in its 1986 asbestos rule, reviewed each of these diseases and provided details on the studies demonstrating the relationship between asbestos exposure and the clinical evidence of disease. In 2001, the ATSDR published an updated *Toxicological Profile for Asbestos* that also included an extensive discussion of these three diseases. A search of peer-reviewed scientific literature using databases, such as Gateway, PubMed, and ToxLine, accessed through the National Library of Medicine (NLM), yielded nearly 900 new references on asbestos from January 2000 to October 2003. Many of these recent articles[19] continue to demonstrate and support findings of asbestos-induced lung cancer, mesotheliomas, and asbestosis, consistent with the conclusions of OSHA and ATSDR. Thus, in the scientific community, there is compelling evidence of the adverse health effects of asbestos exposure. This has led some researchers and stakeholders to recommend a worldwide ban of asbestos.[20]

B. Factors Affecting the Occurrence and Severity of Disease

The toxicity of asbestos, and the subsequent occurrence of disease, is related to its concentration (C) in the mine air and to the duration (T) of the miner's exposure. Other variables, such as the fiber's characteristics or the effectiveness of the miner's lung clearance mechanisms, also affect disease severity.

1. Concentration (C)

Currently, the concentration (C) of asbestos is expressed as the number of fibers per cubic centimeter (f/cc). Some studies have also reported asbestos concentrations in the number of fibers per milliliter (f/mL), which is an equivalent concentration to f/cc. MSHA's existing PELs for asbestos are expressed in f/mL for metal and nonmetal mines and as f/cc for coal mines. To improve consistency and avoid confusion, we express the concentration of airborne fibers as f/cc in this proposed rule, for both coal and metal and nonmetal mines.

Older scientific literature (*i.e.*, 1960's and 1970's) reported exposure concentrations as million particles per cubic foot (mppcf) and applied a conversion factor to convert mppcf to f/cc. OSHA (51 FR 22617) used a factor of 1.4 when performing these conversions. More recently, Hodgson and Darnton (2000) recommended the use of a factor of 3. In our evaluation of the scientific literature, we did not critically evaluate the impact of these and other conversion factors. We note this difference here for completeness. Because we are relying on OSHA's risk assessment, we are using OSHA's conversion factor

2. Time (T)

Epidemiological and toxicological studies generally report time (T) in years (yr). The product of exposure concentration and exposure duration (*i.e.*, $C \times T$) is referred to as ''fiber-years''.[21] When developing exposure-response relationships for asbestos-induced health effects, researchers typically use ''fiber-years'' to indicate the level of workplace exposure. Finkelstein[22] noted, however, that this product of exposure concentration times duration of exposure ($C \times T$) assumes an equal weighting of each variable (C, T).

[17] GETF Report, p. 38, 2003; OSHA (40 FR 47654), 1975.

[18] Lane *et al.*, 1968; OSHA (40 FR 47654), 1975.

[19] Baron, 2001; Bolton *et al.*, 2002; Manning *et al.*, 2002; Nicholson, 2001; Osinubi *et al.*, 2000; Roach *et al.*, 2002.

[20] Maltoni, 1999.

[21] ATSDR, 2001; Fischer *et al.*, 2002; Liddell, 2001; Pohlabeln *et al.*, 2002.

[22] Finkelstein, 1995; ATSDR, p. 42, 2001.

3. Fiber Characteristics

Baron (2001) reviewed techniques for the measurement of fibers and stated, ''* * * fiber dose, fiber dimension, and fiber durability are the three primary factors in determining fiber [asbestos] toxicity * * *''. Manning *et al.* (2002) also noted the important roles of bio-persistence (*i.e.*, durability), physical properties, and chemical properties in defining the ''toxicity, pathogenicity, and carcinogenicity'' of asbestos. Roach *et al.* (2002) stated that—

> Physical properties, such as length, diameter, length-to-width (aspect ratio), and texture, and chemical properties are believed to be determinants of fiber distribution [in the body] and disease severity.

Many other investigators [23] also have concluded that the dimensions of asbestos fibers are biologically important.

OSHA and MSHA currently specify that analysts count those fibers that are over 5.0 micrometers (μm) in length with a length to diameter aspect ratio of at least 3:1. Several recent publications [24] support this aspect ratio, although larger aspect ratios such as 5:1 or 20:1 have been proposed.[25] There is some evidence that longer, thinner asbestos fibers (*e.g.*, greater than 20 μm long and less than 1 μm in diameter) are more potent carcinogens than shorter fibers. Suzuki and Yuen (2002), however, concluded that ''Short, thin asbestos fibers should be included in the list of fiber types contributing to the induction of human malignant mesotheliomas * * * ''. More recently, Dodson *et al.* (2003) concluded that all lengths of asbestos fibers induce pathological responses and that researchers should exercise caution when excluding a population of inhaled fibers based on their length.

We have determined that researchers have found neither a reliable method for predicting the contribution of fiber length to the development of disease, nor evidence establishing the exact relationship between them. There is suggestive evidence that the dimensions of asbestos fibers may vary with different diseases. A continuum may exist in which shorter, wider fibers produce one disease, such as asbestosis, and longer, thinner fibers produce another, such as mesotheliomas.[26] The scientific community continues to publish new data that will enable regulatory agencies, such as MSHA, to better understand the relationship between fiber dimensions, durability, inhaled dose, and other important factors that determine the health risks of exposure not only to asbestos, but also to other fibers.

4. Differences in Fiber Potency

The theory that the differences among fibers have an effect on their ability to produce adverse effects on human health has received a great deal of attention. Hodgson and Darnton (2000), Browne (2001), and Liddell (2001) discuss a fiber gradient hypothesis, which is now termed the amphibole hypothesis. This hypothesis proposes that the amphiboles (*e.g.*, crocidolite, amosite) are more hazardous than the serpentine, chrysotile. ATSDR (p. 39, 2001) recently stated that—

> Available evidence indicates that all asbestos fiber types are fibrogenic, although there may be some differences in relative potency among fiber types.

In its 1986 asbestos rule, OSHA (51 FR 22628) stated that—

> * * * epidemiological and animal evidence, taken together, fail to establish a definitive risk differential for the various types of asbestos fiber. Accordingly, OSHA has * * * recognized that all types of asbestos fiber have the same fibrogenic and carcinogenic potential * * *

In its comments on MSHA's asbestos ANPRM, NIOSH stated that—

> (3) experimental animal carcinogenicity studies with various minerals have provided strong evidence that the carcinogenic potential depends on the ''particle'' length and diameter. The consistency in tumorigenic responses observed for various mineral particles of the same size provides reasonable evidence that neither composition nor origin of the particle is a critical factor in carcinogenic potential; * * *

This issue remains unresolved. Although possible differences in fiber potency are beyond the scope of this proposed rule, we will continue to monitor results of research in this area.

5. Lung Clearance Mechanisms

Inhaled asbestos may deposit throughout the respiratory tract, depending on the aerodynamic behavior of the fibers.[27] As noted by Baron (2001), ''* * * fiber aerodynamic behavior indicates that small diameter fibers are likely to reach into and deposit in the airways of the lungs.'' Clearing the lungs of deposited asbestos occurs by several mechanisms. In the mid-airways (*i.e.*, bronchial region), small hair-like cells sweep the mucus containing asbestos toward the throat, at which time it is swallowed or expectorated. The swallowing of mucus through this clearance mechanism can result in inhaled asbestos reaching the gastrointestinal tract.

In the air sacs deep within the lungs (the alveolar region), pulmonary macrophages engulf foreign matter, including asbestos fibers. The macrophages attempt to remove these fibers by transporting them to the circulatory or lymphatic system. Some studies have shown that groups of macrophages try to engulf longer fibers.[28] When asbestos fibers are not cleared, they may initiate inflammation of the cells lining the alveoli. This inflammation leads to more serious physical effects in the lungs. OSHA (1986), ATSDR (2001), and several recent papers [29] discuss these mechanisms for the pulmonary clearance of asbestos.

C. Specific Human Health Effects

1. Lung Cancer

Lung cancer is a chronic, irreversible, and often fatal disease of the lungs. Epidemiological studies confirm, and toxicological studies support, the carcinogenicity of asbestos. (See section IV.D. below.) The form of lung cancer seen most often in asbestos-exposed individuals is bronchial carcinoma. Some of the risk factors for lung cancer include airborne asbestos concentration, duration of exposure, fiber dimensions, the age of the individual at the time of first exposure, and the number of years since the first exposure.[30] Another major risk factor is the smoking of tobacco products. Numerous studies have concluded that there are synergistic effects between asbestos and tobacco smoke in the development of lung cancer.[31] This is especially relevant to miners as NIOSH (May 2003) estimates that 33 percent of miners currently smoke.

The mechanism through which asbestos causes lung cancer is under study. Recent papers by Manning *et al.* (2002), Xu *et al.* (2002), and Osinubi *et al.* (2000) describe a scheme of cell signaling and inflammation with the release of reactive oxygen species and reactive nitrogen species.

The latency period for asbestos-related lung cancer is generally 20–30 years, although some cases have been reported within 10 years, and some up to 50 years, after initial asbestos exposure.[32] Lung cancer caused by

[23] ATSDR, 2001; Osinubi *et al.*, 2000; Peacock *et al.*, 2000; Langer *et al.*, 1979.

[24] ATSDR, 2001; Osinubi *et al.*, 2000.

[25] Wylie *et al.*, 1985.

[26] ATSDR, pp. 39–41, 2001; Mossman, pp. 47–50, 2003.

[27] ICRP, 1966.

[28] Warheit, p. 308, 1993.

[29] Baron, 2001; Osinubi *et al.*, 2000.

[30] Yano *et al.*, 2001; ATSDR, 2001.

[31] Bolton *et al.*, 2002; Manning *et al.*, 2002; OSHA, 1986.

[32] Roach *et al.*, 2002.

asbestos can progress even in the absence of continued exposure. Thus, in all of its stages, lung cancer constitutes a material impairment of human health or functional capacity.

In the preamble to its 1986 asbestos standard (51 FR 22615), OSHA stated, ''Of all the diseases caused by asbestos, lung cancer constitutes the greatest health risk for American asbestos workers.'' OSHA (51 FR 22615–22616) also stated, ''* * * Asbestos exposure acts synergistically with cigarette smoking to multiply the risk of developing lung cancer.'' MSHA believes that the essential points of this statement remain true today.

Steenland *et al.* (2003) estimated that there were about 150,000 lung cancer deaths in 1997 in the United States, and that 6.3 to 13 percent (*i.e.*, 9,700 to 19,900) of these lung cancer deaths were occupationally-related. Steenland *et al.* (1996) also had estimated that, in the mid-1990's, there were about 5,400 asbestos-related lung cancer deaths per year. NIOSH (May 2003) identified over 10,000 lung cancer deaths in the United States during 1999 based on only 20 Census Industry Codes (CIC). This sum was computed from ''selected states,'' not the entire United States. NIOSH (May 2003) also identified 300 lung cancer deaths among coal miners from 15 selected states.

2. Mesotheliomas

Mesotheliomas are malignant tumors that are rapidly fatal. They involve thin membranes that line the chest (the pleura) and that surround internal organs (the peritoneum) following asbestos exposure.[33] Mesotheliomas begin with a localized mass and, like other malignant tumors, they can spread (metastasize) to other parts of the body.[34] It does not appear that smoking is a major risk factor in the development of mesotheliomas.[35]

As in cases of lung cancer and asbestosis, mesotheliomas also have a latency period, varying from 15 to over 40 years.[36] Orenstein *et al.* (2000) reported an even wider range for the latency, from a minimum of 5 years to a maximum of 72 years. In cases involving the pleura, patients often complain of chest pain, breathing difficulties on exertion, weakness, and fatigue. Other early symptoms of this disease may also include weight loss and cough. As the disease progresses, there is increased restriction of the chest wall and highly abnormal respiration, often characterized by a rapid and shallow breathing pattern. Mesotheliomas are rapidly progressive even in the absence of continued asbestos exposure. Mesotheliomas have a poor prognosis in most patients; death typically occurs within a year or so of diagnosis.[37] Thus, like lung cancer, mesotheliomas materially impair human health and functional capacity.

As noted by ATSDR (2001), OSHA (1986), and many others,[38] mesotheliomas are extremely rare tumors, particularly in non-asbestos exposed individuals. OSHA (1986) has stated, ''* * * In some asbestos-exposed occupational groups, 10 percent to 18 percent of deaths have been attributable to malignant mesotheliomas * * * ''. NIOSH (May 2003) reported that there were about 2,500 deaths due to malignant mesotheliomas in the United States in 1999. Steenland *et al.* (2003) estimated that there were about 2,100 deaths in the United States from mesotheliomas in 1997, and that, in males, 85–90 percent of these deaths from mesotheliomas were due to occupational asbestos exposure. These tumors were generally the underlying (primary) cause of death, and not just a contributing cause of death. NIOSH found that most mesothelioma deaths were included with the categories of ''all other industries'' (56 percent) or ''all other occupations'' (57 percent). For those death certificates that included a Census Industry Code (CIC), the most frequently recorded was ''construction.'' The 2003 NIOSH publication, *Work-Related Lung Disease Surveillance Report 2002* (WoRLD), did not provide specific data on mesotheliomas among miners.

One commenter expressed concern that the use of perchlorate in explosives might be a co-factor for increasing the incidence or shortening the latency period for mesothelioma among miners. In investigating this comment, we found that perchlorate can be a component in explosives[39] and that perchlorate may cause or contribute to thyroid disease.[40] We found no studies linking perchlorate to mesotheliomas. The California State Department of Toxic Substances Control states that perchlorate ''* * * has not been linked to cancer in humans * * *''.[41]

3. Asbestosis

Asbestosis is a chronic and irreversible disease caused by the deposition and accumulation of asbestos in the lungs. It can lead to substantial injury and may cause death from the build up of bands of scar tissue and a loss of lung elasticity (*i.e.*, pulmonary fibrosis).[42] It is not a tumor. Following exposure to asbestos, chronic inflammation may occur that leads to the multiplication of collagen-producing cells in the lung and the accumulation of thick collagen bundles in essential lung tissues.[43] These structural changes result in a hardening or stiffening of the lungs. Physicians who specialize in diseases of the lung also classify asbestosis as a restrictive lung disease due to this loss of elasticity.

In asbestosis, the lungs are unable to properly expand and contract during the breathing cycle and, thus, lung volumes, airflows, and respiratory frequencies are likely to be abnormal.[44] Two common symptoms of this disease are cough and breathing difficulties. Patients with asbestosis may also complain of a general feeling of discomfort, weakness, and fatigue. Breathing difficulties, weakness, and fatigue are often more severe with work or exercise. As the disease progresses, patients begin to experience symptoms even while resting and are likely to become permanently disabled.[45] Patients with severe asbestosis also may experience heart or circulation problems, such as heart enlargement. Like lung cancer and mesotheliomas, asbestosis may be progressive even in the absence of continued asbestos exposure. Thus, asbestosis, even in its earliest stages, constitutes a material impairment of human health and functional capacity.

NIOSH (May 2003) reported that there were about 1,200 asbestosis-related deaths in the United States in 1999. Of these, asbestosis was the underlying cause in about a third of these deaths (400) and a contributing cause in the others (800). Steenland *et al.* (2003) estimated that there were about 400 deaths from asbestosis in 1997, and that 100 percent of these asbestosis-deaths were due to occupational exposure. As shown by NIOSH (May 2003), the number of deaths related to asbestosis increased over ten-fold between 1968 and 1999. NIOSH also reported that these figures likely reflect improved diagnostic tools and the long latency period for evidence of disease that follows asbestos exposure.

[33] ATSDR, 2001.

[34] Roach *et al.*, 2002.

[35] Bolton *et al.*, 2002.

[36] Suzuki and Yuen, 2002.

[37] Bolton *et al.*, 2002; Roach *et al.*, 2002; Osinubi *et al.*, 2000; West, 2003.

[38] Bolton *et al.*, 2002; Britton, 2002; Carbone *et al.*, 2002; Manning *et al.*, 2002; Orenstein *et al.*, 2000; Roach *et al.*, 2002; Suzuki and Yuen, 2002.

[39] EPA, 2002.

[40] ATSDR, 1998.

[41] *http://www.dtsc.ca.gov/ToxicQuestions/glossary.html.*

[42] ATSDR, 2001.

[43] Osinubi *et al.*, 2000.

[44] West, 2000; West, 2003.

[45] OSHA, 1986.

The death certificates for most individuals who died from asbestosis lacked the Census Industry Code (CIC) and the Census Occupation Code (COC). Most asbestosis deaths were classified under ''all other industries'' (45 percent) and ''all other occupations'' (57 percent). For those death certificates that included a CIC and a COC, the most frequently recorded industry and occupation were ''construction'' (CIC = 060) and ''plumbers, pipefitters, and steamfitters'' (COC = 585), respectively. There were no specific data on asbestosis-related deaths among miners in the NIOSH WoRLD publication (May 2003).

4. Other Cancers

OSHA, in its 1986 rule, reviewed epidemiologic studies of asbestos workers with cancer of the colon, rectum, kidney, larynx (voice box), throat, or stomach. Of these studies, researchers placed the greatest emphasis on those involving gastrointestinal cancers. OSHA concluded, ''* * * the risk of incurring cancers at these [other] sites is not as great as the increased risk of lung cancer * * *''. Thus, OSHA included lung and gastrointestinal cancers, and not these other cancer sites, in its 1986 risk assessment. MSHA believes that the statement remains true today, based on studies cited by ATSDR (2001) and by recent papers on kidney cancer,[46] laryngeal cancer,[47] lymphomas,[48] and pancreatic cancer.[49] We have not attempted to quantify the risks of these other cancers, which are small in comparison to lung cancer and mesotheliomas.

5. Reversible Airways Obstruction (RAO)

Under normal physiological conditions, oxygen and other inhaled chemical substances pass through a branching network of airways that become narrower, shorter, and more numerous as they penetrate deeper into the lung.[50] The diameter of each airway has an important effect on its airflow. A reduction in airway diameter occurs temporarily on exposure to some chemical substances and permanently in some diseases. These reductions lead to temporary or permanent airflow limitations. A temporary reduction of airway diameter and the resulting difficulties in breathing have also been called broncho-constriction, acute airways constriction or obstruction, or reversible airways obstruction (RAO). Such constriction or obstruction typically involves airways in the mid to lower respiratory tract.

Several recent studies have examined respiratory health and respiratory symptoms of asbestos-exposed workers.[51] Wang *et al.* (2001) reported permanent changes in airway diameters and, thus, permanent airflow limitations in diseases such as asbestosis or chronic obstructive pulmonary disease (COPD). Although patients can recover from RAO, they do not recover from asbestosis or COPD, which are typically progressive, leading to increasingly severe illness and premature death.

Delpierre *et al.* (2002) reported that RAO in asbestos workers was independent of x-ray signs of pulmonary or pleural fibrosis, as well as a worker's smoking status. The long-term implications of RAO are unknown at this time. Delpierre *et al.*, however, encouraged physicians to screen asbestos workers for RAO. Lung function tests may be useful in the early diagnosis of asbestos-disease, especially if RAO precedes the development of irreversible pulmonary disease, such as asbestosis.

6. Other Nonmalignant Pleural Disease and Pleural Plaques

The pleura is the membrane lining the chest cavity. Pleural plaques are discrete, elevated areas of nearly transparent fibrous tissue (scar tissue) and are composed of thick collagen bundles. Pleural thickening and pleural plaques are biologic markers reflecting previous asbestos exposure.[52] They appear opaque on radiographic images and white to yellow in microscopic sections.[53] The American Thoracic Society (ATS, 2004) has described the criteria for diagnosis of non-malignant asbestos-related pleural disease and pleural plaques.

Pleural plaques are the most common manifestation of asbestos exposure.[54] Only rarely do they occur in persons who have no history or evidence of asbestos exposure. Pleural thickening and pleural plaques may occur in individuals exposed to asbestos in both occupational settings, such as miners, and non-occupational settings, such as family members. For example, the prevalence of pleural plaques ranges from 0.53 percent to 8 percent in environmentally exposed populations, such as the residents of Libby, Montana; 3 percent to 14 percent in dockyard workers; and up to 58 percent among insulation workers.

Pleural plaques may develop within 10–20 years after an initial asbestos exposure[55] and slowly progress in size and amount of calcification, independent of any further exposure. There is no evidence that pleural plaques undergo malignant degeneration into mesothelioma.[56] Pleural thickening and pleural plaques, however, may impair lung function and may precede chronic lung disease that develops in some individuals.[57] Rudd (1996), for example, reported that the incidence of lung cancer in patients with pleural plaques is higher than that of other patients. These plaques are also part of the clinical picture of asbestosis.

7. Asbestos Bodies

Some asbestos-exposed individuals may expel asbestos fibers from the lungs with a coating of iron and protein. These collections of coated fibers, found in sputum or broncho-alveolar lavage (BAL) fluid, are called asbestos bodies or ferruginous bodies.[58] Like pleural thickening and pleural plaques, these bodies indicate prior asbestos exposure.

D. Support From Toxicological Studies of Human Health Effects of Asbestos Exposure

Many studies are available that clearly demonstrate the toxicity of asbestos (*e.g.*, carcinogenicity, genotoxicity, pneumotoxicity) and confirm observed human responses.[59] Studies conducted in baboons, mice, monkeys, and rats have all demonstrated that asbestos fibers are carcinogenic.[60] OSHA's risk assessment, however, did not rely on data from *in vivo* or *in vitro* toxicological studies to determine the human health effects from exposure to asbestos. In the preamble to its 1986 asbestos rule (51 FR 22632), OSHA stated—

> OSHA chose *not* [emphasis added] to use animal studies to predict quantitative estimates of risk from asbestos exposure because of the many high quality human studies available that were conducted in actual workplace situations * * * OSHA has supplemented the human data with results from the animal studies when evaluating the

[46] McLaughlin and Lipworth, 2000; Sali and Boffetta, 2000.

[47] Browne and Gee, 2000.

[48] Becker *et al.*, 2001.

[49] Ojajarvi *et al.*, 2000.

[50] West, 2000.

[51] Delpierre *et al.*, 2002; Eagen *et al.*, 2002; Selden *et al.*, 2001.

[52] ATSDR, 2001; Manning *et al.*, 2002.

[53] Bolton *et al.*, 2002; Manning *et al.*, 2002; Roach *et al.*, 2002; Peacock *et al.*, 2000; ATSDR, 2001.

[54] Cotran *et al.*, p. 732–734, 1999; Peacock *et al.*, 2000.

[55] Bolton *et al.*, 2002; OSHA, 1986.

[56] Peacock *et al.*, 2000; West, 2003.

[57] Schwartz *et al.*, 1994.

[58] ATSDR, 2001; Peacock *et al.*, 2000.

[59] OSHA, 1986; ATSDR, 2001.

[60] Davis *et al.*, 1986; Davis and Jones, 1988; Davis *et al.*, (in IARC) 1980; Davis *et al.*, 1980; Donaldson *et al.*, 1988; Goldstein and Coetzee, 1990; McGavran *et al.*, 1989; Reeves, *et al.*, 1974; Wagner *et al.*, 1974, 1980; Webster *et al.*, 1993.

health information and determining the significance of risk.

Because we are relying on OSHA's 1986 asbestos risk assessment for this proposed rule, we do not use the toxicological studies for a quantitative assessment of risk, but as supportive of the causative relationship between asbestos exposure and observed human health effects.

Toxicological studies are providing important information on possible mechanism(s) through which asbestos causes disease. The ATSDR *Toxicological Profile for Asbestos* (updated 2001) contains a more detailed discussion on this topic and describes several mechanisms of action for asbestos. These include—

- Its direct interaction with cellular macromolecules,
- Its recruitment of pulmonary macrophages that produce reactive oxygen and nitrogen species, and
- Its initiation of other cellular responses (*e.g.*, inflammation).

V. Characterization and Assessment of Exposures in Mining

Asbestos minerals are widespread in the environment.[61] The use of asbestos-contaminated crushed rocks in roads, asbestos in insulation and other building materials, and the release of asbestos from brakes on vehicles contributes to its presence in the environment. Occupational asbestos exposures can be much higher than the asbestos levels the public typically encounters.

Miners may be exposed to asbestos in nature, as well as in commercial products. Mining, milling, maintenance, or other activities at the mine may result in the release or re-suspension of asbestos into the air.[62] In some geologic formations, asbestos may be in isolated pockets or distributed throughout the ore. Mining operations, such as blasting, cutting, crushing, grinding, or simply disturbing the ore or surrounding earth may cause the asbestos to become airborne. Milling operations may transform bulk ore containing asbestiform minerals into respirable fibers. Similarly, other activities conducted at mine sites, such as removing asbestos-containing materials during renovation or demolition of buildings and equipment repair work,[63] may contribute to a miner's asbestos exposure.

[61] ATSDR, 2001.

[62] MSHA (Bank), 1980; Amandus *et al.*, Part I, 1987.

[63] EPA, 1986, 1993, April 2003.

A. Determining Asbestos Exposures in Mining

To evaluate asbestos exposures in mines, MSHA collects personal exposure air samples using a personal sampling pump and a filter-cassette assembly, composed of a 50-mm electrically conductive extension cowl and a 25-mm diameter mixed cellulose ester (MCE) filter. Following standard sampling procedures, we also submit blank filters for analysis. Analysts use the blanks to correct the sampling results for background fiber counts due to variations in the manufacturing and analysis of the filter.

Since 2001, we have used contract laboratories to analyze our asbestos samples by PCM. The contract laboratories report analytical results as the fiber concentration (f/cc) for each filter analyzed. Then, to evaluate a miner's full-shift exposure, MSHA calculates an 8-hour time-weighted average concentration from a consecutive series of individual filters.

Several factors complicate the evaluation of personal exposure levels in mining. Non-asbestos particles collected on the filter can hide the asbestos fibers (overloading) and, as discussed earlier (see section II.C.2), mining samples may also contain intermediate fibers that are difficult to classify. (See section II.B in this preamble.)

B. Exposures From Naturally Occurring Asbestos

Mining and milling of asbestos-contaminated ore can release fibers into the ambient air. Beginning in January 2000, we initiated a focused effort to determine the extent of asbestos exposure among miners. We chose 124 metal and nonmetal mines for sampling based on the following:

- Geological information linking a higher probability for asbestos contamination with certain types of ores or commodities.
- Historical records identifying locations of potential problem mines.
- Complaints from miners reporting asbestos on mine property.

Asbestos tends to accumulate during the milling process, which is often in enclosed buildings. The use of equipment and machinery or other activities in these locations may re-suspend the asbestos-containing dust from workplace surfaces into the air. For this reason, we generally find higher airborne concentrations in mills than among mobile equipment operators or in ambient environments, such as pits. The following example supports this finding.

1. Asbestos-Contaminated Ore Case Study: Wollastonite

Wollastonite is a monocalcium silicate found in the United States, Mexico, and Finland. It occurs as prismatic crystals that can split into massive-to-acicular (needle-like) fragments when processed, and is used mainly in ceramics.[64]

A consumer recently sent a sample of the final bulk product from a wollastonite mine to a commercial laboratory for analysis. When the analysis indicated the presence of asbestos contamination, the consumer informed the mine operator. The mine operator contacted MSHA and informed us of this finding after their contract laboratory confirmed the presence of tremolite in product samples. MSHA then conducted industrial hygiene sampling in the mill and the pit to verify and track the source of the tremolite. We found that concentrations in the mill exceeded 2.0 f/cc as measured by PCM. Although asbestos averaged only about 1.3 percent of the total fibers, over half of the exposures in the mill exceeded 0.1 f/cc of asbestos (the OSHA 8-hour, TWA PEL). Miners' exposures in the pit were much lower and further analyses indicated that few of these samples contained asbestos.

The mine instituted an aggressive cleanup and control policy in the interest of the company and their miners' health. This wollastonite facility provides and launders uniforms for the millers, provides physical examinations to miners and their families, and uses other administrative controls to limit take-home contamination. In addition to conducting personal asbestos sampling, MSHA assisted mine management through the following compliance assistance activities:

- Assistance in developing cleanup and monitoring procedures.
- Discussion of hazards of asbestos exposure with miners and the operator.
- Identification of accredited laboratories familiar with mining samples to perform asbestos analyses.
- Assistance in implementation of a respiratory protection program.
- Instruction in recognition and avoidance of asbestos. MSHA and the mine operator worked together in recognizing the problem, evaluating the hazard, and determining ways to control exposures. This case study demonstrates successful cooperation to protect the health of miners.

[64] Warheit, p. 18, 1993.

2. Methods of Reducing or Avoiding Miners' Exposures to Naturally Occurring Asbestos

Some mine operators mining other commodities that are likely to contain asbestos, such as vermiculite, have stated that they are making an effort to avoid deposits and seams likely to contain substantial quantities of asbestos. They use knowledge of the geology of the area, visual inspections of the working face, and sample analysis to avoid encountering asbestos deposits, thus preventing asbestos contamination of their product.[65] In addition, some mine operators have voluntarily adopted the OSHA 8-hour, TWA PEL (0.1 f/cc), thus reducing the potential for asbestos-related illness among miners.

C. Exposures From Introduced (Commercial) Asbestos

Asbestos is an important component in some commercial products and may be found as a contaminant in others. Due to improved technology and increased awareness, however, substitutes for asbestos in products are available for almost all uses, and manufacturers have removed the asbestos from many new products.[66] Nevertheless, there are mines, including coal mines, that have introduced commercial asbestos-containing products on their property. Some of these introduced products may include asbestos-containing building materials, such as Transite® board, used during construction, rehabilitation, or demolition projects. Other examples of introduced commercial products that may contain asbestos are brake linings for mining equipment, insulation, joint and packing compounds, and asbestos welding blankets.

Occasionally, miners report incidents of possible asbestos release through MSHA's Hazard Complaint Program. Inspectors also report mines with noticeably deteriorated asbestos-containing building materials (ACBM). We investigate these reported situations and take appropriate action. The following example describes an incident in which miners unsafely removed asbestos at a mining operation.

1. Introduced Asbestos Case Study: Potash

In June 2003, eight miners removed siding on three transfer conveyors originally installed in 1962 at a potash mine in Utah. The siding was weathered and deteriorated to the point of being friable (crumbling). The type of siding was a commercial product named Galbestos®, which contains 7 percent chrysotile asbestos, as indicated on the Material Safety Data Sheet (MSDS). Analysis of bulk samples of the debris left behind by the removal of the siding confirmed that it contained chrysotile asbestos. When the miners removed it without using special precautions, they released asbestos into the air. It is possible that these miners contaminated themselves with asbestos and carried it to their families and communities (*i.e.*, take-home contamination).

MSHA became aware of this asbestos-removal work when one of the miners made a hazard complaint to the MSHA District Office. We conducted an investigation and determined that the company officials had known of the potential asbestos hazard for at least 2 years. We found no asbestos in the personal air samples collected after the siding had been removed. Although we did not issue citations for overexposure to asbestos, we issued citations to the company for failure to implement special work procedures, failure to issue appropriate personal protective equipment, and failure to train the affected miners for the task. The mine operator took corrective action and we terminated these citations.

2. Methods of Reducing or Avoiding Miners' Exposures to Introduced (Commercial) Asbestos

Existing Federal and state standards already address the removal of asbestos-containing building materials (ACBM). If the asbestos-containing material is intact, it is preferable to leave it where it is. If the asbestos-containing material is worn or deteriorating, these standards require the use of special precautions (*e.g.*, personal protective equipment, training, decontamination) to prevent or minimize exposure of workers and the public and contamination of the environment. We train our inspectors to encourage mine operators to have worn or deteriorating asbestos-containing products removed by persons specially trained to remove the asbestos-containing material safely.

D. Sampling Data and Exposure Calculations

After the national publicity surrounding asbestos-related diseases and death among the population of Libby, Montana, MSHA closely reviewed and updated its asbestos-related health procedures and policies for metal and nonmetal mines. We then made sure these procedures and policies were applied consistently across the country. For example, we switched from a 37-mm to a 25-mm filter cassette and recommended appropriate flow rates and sampling times. We also allocated additional resources to asbestos sampling and analysis to verify and evaluate the extent of asbestos exposures in mining.

1. Explanation of Sampling Data and Related Calculations

The time-weighted average (TWA) concentration (f/cc) for individual filters (n = 1, 2 * * *) is calculated by dividing the number of fibers (f) collected on the filter by the volume of air (cc) drawn through the filter. TWA_{sum} is the total time-weighted average concentration for all filters in the series over the total sampling time. The exposure limits in MSHA standards are based on an 8-hour workday, regardless of the actual length of the shift. MSHA measures the miner's exposure for the entire time the miner works. We then calculate a full-shift airborne exposure concentration as if the fibers had been collected over an 8-hour shift. This allows us to compare the miner's exposure to the 8-hour TWA, full-shift exposure limit. MSHA calls this calculated 8-hour TWA a ''shift-weighted average (SWA).''

We calculate the TWA_{sum} and SWA exposure levels for each miner sampled according to the following formulas, respectively.

$$TWA_{sum} = (TWA_1t_1 + TWA_2t_2 + * * * + TWA_nt_n)/(t_1 + t_2 + * * * + t_n)$$

$$SWA = (TWA_1t_1 + TWA_2t_2 + * * * + TWA_nt_n)/480 \text{ minutes}$$

Where:

TWA_n is the time-weighted average concentration for filter ''n''.

t_n is the duration sampled in minutes for filter ''n''.

TWA_nt_n is the time-weighted average concentration for filter ''n'' multiplied by the duration sampled for filter ''n''.

$(t_1 + t_2 + * * * + t_n)$ is the total time sampled in minutes.

MSHA defines a ''sample'' as the average 8-hour full-shift airborne concentration that represents an individual miner's full-shift exposure.

The following information from our database illustrates the sampling results from these calculations. For one mechanic at the potash mine in our previous example, MSHA used a series of three filter-cassettes to determine the miner's full-shift exposure. We sampled a total of 577 minutes. The highest TWA concentration for one filter-cassette in this series was 4.100 f/cc as analyzed by PCM. MSHA calculated the mechanic's full-shift exposure to report the fiber concentration as if the mechanic had received the full exposure in 8 hours

[65] GETF Report, pp. 17–18, 2003.

[66] GETF Report, pp. 12 and 15, 2003.

(480 minutes). The mechanic's shift-weighted average (SWA) was 1.982 f/cc.

TABLE V–1.—EXAMPLE OF PERSONAL SAMPLING RESULTS

Mechanic sampled 6/17/2003 at 1.7 Lpm	Sampling time (minutes)	PCM TWA fiber concentration (f/cc)
Filter-cassette 1 ...	230	4.100
Filter-cassette 2 ...	252	0.016
Filter-cassette 3 ...	95	0.045
TWA_{sum} result	577	1.649
Sample (SWA) result	480	1.982

2. Summary of MSHA's Asbestos Sampling and Analysis Results

To assess exposures and present our asbestos sampling results to the public, we compiled our asbestos sampling data for the period January 1, 2000 through December 31, 2003. We formatted these data into four Excel® workbooks, one for each year, and placed them, together with additional explanatory information, on our *Asbestos Single Source Page* at *http://www.msha.gov/asbestos/asbestos.htm*.

We calculated an 8-hour full-shift exposure for each miner sampled from the TWA of individual filters, typically three filters per shift. These data include the results of 703 full-shift personal exposure samples, comprised of 2,184 filter-cassettes, and cover 163 industrial hygiene sampling visits at 125 mines (124 metal and nonmetal mines and one coal mine), including some mines and mills that are now closed. Because the last remaining asbestos mine in the United States (Joe 5 Pit in California) closed in December 2002 and its associated mill (King City) closed in June 2003, we excluded those data in our analysis.

Of the remaining 123 mines that MSHA sampled during this 4-year period, 18 mines could be potentially impacted by the lowering of the full-shift permissible exposure limit to 0.1 f/cc as measured by PCM. These 18 mines have had at least one miner exposed to airborne fiber concentrations exceeding 0.1 f/cc during this period. Two of the 18 mines (iron ore and wollastonite) had personal asbestos exposures confirmed by TEM exceeding 0.1 f/cc. Excluding the 42 samples from the asbestos mine and mill, 8 percent of the remaining 661 personal samples had 8-hour TWA, full-shift fiber concentrations greater than the proposed 0.1 f/cc PEL, as measured by PCM. Table V–2 below summarizes these sampling results.

TABLE V–2.—PERSONAL EXPOSURE SAMPLES, ANALYZED BY PCM, AT CURRENTLY ACTIVE MINES [1] BY COMMODITY (1/2000–12/2003)

Commodity	Number of mines sampled	Number (%) of mines >0.1 f/cc SWA	Number of samples	Number (%) of samples >0.1 f/cc SWA [2]
Rock & quarry products [3]	61	4 (7%)	215	7 (3%)
Vermiculite	4	3 (75%)	127	5 (4%)
Wollastonite	1	1 (100%)	18	18 (100%)
Iron (taconite)	14	5 (36%)	178	17 (10%)
Talc	12	1 (8%)	38	2 (5%)
Boron	2	1 (50%)	9	4 (44%)
Other [4]	29	[5] 3 (10%)	76	3 (4%)
Total	123	[6] 18 (15%)	661	56 (8%)

[1] Excludes data from a closed asbestos mine and mill.
[2] MSHA uses TEM to confirm the presence of asbestos on samples showing exposures exceeding 0.1 f/cc.
[3] Including stone, sand and gravel mines.
[4] Coal, potash, gypsum, salt, cement, clay, lime, mica, metal ore NOS, olivine, shale, pumice, trona, perlite, and gold.
[5] Coal, potash, and gypsum (Coal and potash personal exposures are due to commercially introduced fiber release episodes, *i.e.*, not from a mineral found at the mine).
[6] TEM confirmed asbestos exposures exceeding 0.1 f/cc in two of the 18 mines.

MSHA is proposing to lower its 8-hour TWA, full-shift PEL from 2.0 f/cc to 0.1 f/cc to provide increased protection for miners. As noted in OSHA's risk assessment for its 1986 asbestos rule, there is significant risk of material impairment of health or functional capacity even at this lower PEL. MSHA compliance data indicate that some miners' asbestos exposures have exceeded 0.1 f/cc. Available data from death certificates in 24 states confirm that there is asbestos-related mortality among miners.[67]

[67] NIOSH World, p. E–1, 2003.

VI. The Application of OSHA's Risk Assessment to Mining

We are applying OSHA's risk assessment to our exposure sampling data on miners to estimate the risk from asbestos exposure in mining. In response to the ANPRM, the National Mining Association (NMA) expressed their belief that health risk is related to fiber type and that OSHA's risk assessment is no longer adequate or appropriate for us to use for the mining industry. In developing this proposed rule, we evaluated studies published over the last 20 years since OSHA completed its risk assessment, and studies that specifically focused on asbestos exposures of miners. We have found that these additional studies confirm OSHA's conclusions.

Section VIII of this preamble contains a summary of our findings from applying OSHA's quantitative assessment of risk to the mining industry. The *Preliminary Regulatory Economic Analysis (PREA)* contains a more in-depth discussion of our methodology and conclusions. We placed our PREA in the rulemaking docket and posted it on our *Asbestos Single Source Page* at *http://www.msha.gov/asbestos/asbestos.htm*. We also placed OSHA's risk assessment in the rulemaking docket.

A. Summary of Studies Used by OSHA in Its Risk Assessment

OSHA relied on eight non-mining and milling studies to estimate the risk of lung cancer due to asbestos exposure. They used four studies to estimate the risk of mesotheliomas, and two studies, involving three occupational cohorts, for asbestosis. We briefly review these studies below, since they also serve as the basis of our risk assessment. For completeness, we are including Table VI–1 of some mining and milling studies that have been conducted.

EPA, in its Integrated Risk Information System (IRIS), presents a useful table summarizing data from lung cancer and mesothelioma studies. We extracted that portion of their table dealing with the studies included in OSHA's risk assessment. This is the basis for Table VI–1 below.

TABLE VI–1.—SUMMARY OF LUNG CANCER AND MESOTHELIOMA STUDIES

Human data occupational group	Fiber type	Reported average exposure (f-yr/mL)	Percent (%) increase in cancer per f-yr/mL	Reference
Lung Cancer				
Friction Products	Chrysotile	32	0.058	Berry and Newhouse, 1983.
Textile Products	Mostly Chrysotile	44	2.8	Dement *et al.*, 1982.
Cement Products	Mixed (Amosite, Chrysotile, Crocidolite).	112	6.7	Finkelstein, 1983.
Asbestos Products	Mixed (Amosite, Chrysotile, Crocidolite).	374	0.49	Henderson and Enterline, 1979.
Textile Products	Chrysotile	200	1.1	Peto, 1980.
Insulation Products	Amosite	67	4.3	Seidman *et al.*, 1979; Seidman, 1984.
Insulation Workers	Mixed (Amosite, Chrysotile, Crocidolite).	300	0.75	Selikoff *et al.*, 1979.
Cement Products	Mixed (Amosite, Chrysotile, Crocidolite).	89	0.53	Weill *et al.*, 1979.
Mesotheliomas				
Cement Products	Mixed (Amosite, Chrysotile, Crocidolite).	108	1.2^{E-5}	Finkelstein, 1983.
Textile Products	Chrysotile	67	3.2^{E-6}	Peto *et al.*, 1982.
Insulation Products	Amosite	400	1.0^{E-6}	Seidman *et al.*, 1979; Seidman, 1984.
Insulation Workers	Mixed (Amosite, Chrysotile, Crocidolite).	375	1.5^{E-6}	Selikoff *et al.*, 1979.

1. Lung Cancer

a. Berry and Newhouse, 1983

Berry and Newhouse (1983) conducted a retrospective mortality study (1942–1980) using data from an English factory that manufactured asbestos-containing friction materials (*e.g.*, brake blocks, stair treads). There were 13,460 workers included in this study, of which two-thirds were men. Most had worked in this factory for 2–10 years. The asbestos exposures generally involved chrysotile, although this site also had used crocidolite for two brief periods, one from 1922–1933 and a second from 1939–1944.

Personal air sampling for the assessment of asbestos concentrations in this factory began in 1968. Fiber levels for time periods prior to 1968 were ''estimated by reproducing earlier work conditions using detailed knowledge of when processes were changed and exhaust ventilation introduced.'' Asbestos fiber concentrations were determined over four time periods: Pre-1931, 1932–1950, 1951–1969, and 1970–1979. Before 1931, asbestos levels typically exceeded 20 f/mL throughout the factory. From 1932–1969, asbestos levels decreased and most exposures ranged from 2–5 f/mL. After 1970, levels decreased to below 1 f/mL.

Berry and Newhouse (1983) did not detect excessive mortality at this factory over the period 1942 to 1980. OSHA noted, however, the relatively short duration of employee exposures and the short follow-up period (*e.g.*, less than 20 years for 33 percent of the men). In the preamble to their 1986 asbestos rule, OSHA stated,

> * * * Because of the short follow-up period used, OSHA does not believe that the non-significant increases in lung cancer mortality found by these investigators [Berry and Newhouse] contradict the findings from other studies which show that low-level exposure to asbestos has resulted in excessive mortality from lung cancer * * *

b. Dement et al., 1982

Dement *et al.* (1982) conducted a retrospective cohort mortality (1930–1975) study of 768 men. These men had worked in an asbestos textile factory located in South Carolina where ''only an insignificant quantity of asbestos fiber other than chrysotile was ever processed.'' The men in this study had at least 1 month of employment between January 1, 1940 and December 31, 1965. Dement *et al.* then followed the cohort for another 10 years.

Air samples were collected in this factory between 1930 and 1975 to determine asbestos levels. Impinger samples were collected prior to 1965; then membrane filter sampling was introduced. Membrane filter sampling fully replaced the impinger method in 1971. There were 193 air samples collected in 1930–1945, 183 in 1945–1960, and 5,576 in 1960–1975. The estimated mean asbestos exposure levels by job and calendar time periods, using linear regression models, were as high as 78 f/cc before 1940 and generally ranged from 5–10 f/cc after 1940.

Dement *et al.* (1982) demonstrated a linear dose-response relationship for lung cancer mortality that did not appear to have a threshold. They also found a linear dose-response relationship for non-malignant respiratory disease, other than upper respiratory infection, influenza,

pneumonia, or bronchitis. Like the lung cancer data, the dose-response relationship for non-malignant respiratory disease did not appear to have a threshold.

OSHA's 1986 rulemaking considered that Dement *et al.*'s report of excess risk at low cumulative [asbestos] exposures was well supported because of their ''* * * careful estimation of exposure histories for members of the cohort * * *''.

c. Finkelstein, 1983

Finkelstein (1983) studied a group of 328 men who worked in an Ontario, Canada, factory that manufactured asbestos-cement pipe and rock-wool insulation. Men selected to participate in this study began working at the factory prior to 1961 and worked for the company for at least 9 years. Finkelstein divided the men into three groups based on estimated levels of asbestos exposure: 186 in production (consistent exposure), 55 in maintenance (intermittent exposure), and 87 controls (minimal exposure). The asbestos exposures involved chrysotile and crocidolite, both of which the factory mixed with cement and silica. This study report did not indicate the proportions of asbestos and silica used in the cement.

Air samples were collected to assess asbestos levels at this cement factory. Impinger sampling was conducted between 1943 and 1968. In 1969–1970, the factory began to use the personal membrane filter sampling method and used this sampling data to classify the men who worked in cement production according to their probable cumulative asbestos exposure. They used three sub-groups (A, B, C) of estimated exposure ranges and means as follows:

CUMULATIVE EXPOSURE

[Fiber-years/mL]

	Range	Mean
Subgroup A	8–69	44
Subgroup B	69–121	92
Subgroup C	122–420	180

Finkelstein also relied on detailed employment histories and medical records for each man in the study. Finkelstein (1983) found that the asbestos-exposed workers had *all-cause* mortality rates that were twice that of the general Ontario population. He also reported that the mortality rates due to malignancies and the deaths attributable to lung cancer were five and eight times those of the general population, respectively.

d. Henderson and Enterline, 1979

In 1979, Henderson and Enterline published an update of their 1941–1967 mortality study. The extended study provided data through 1973 and included 1,075 men who had worked for an asbestos company in the United States for an average of 25 years. Most of the workplace exposures involved chrysotile, although some involved amosite or crocidolite.

Henderson and Enterline conducted impinger sampling to determine asbestos levels for this study and reported asbestos concentrations in millions of particles per cubic foot (mppcf). They also identified five cumulative exposure categories (87, 255, 493, 848, and 1,366 fiber-years/cc) by converting their original data, reported in mppcf, to f/cc using a factor of 1:1.4 as discussed in the 1986 OSHA asbestos rule (51 FR 22617).

For the period 1941–1973, Henderson and Enterline (1979) found that this cohort had an overall mortality rate that was about 20 percent higher than that of males in the general population. This increase in mortality rate was mainly due to lung cancer and other respiratory diseases.

OSHA (1986) noted that the excess mortality risk found by Henderson and Enterline (1979) was less than that found by Dement *et al.* (1982). Henderson and Enterline, however, studied retired asbestos workers, which ''constitute a select group of survivors'' (51 FR 22617), and which might explain the difference in results of these two mortality studies.

e. Peto, 1980

Peto (1980) continued the study of workers in an asbestos textile factory in England. His paper, published in 1980, was an extension of two earlier reports, one by Doll (1955) and a second by Peto *et al.* (1977). In this updated study (1980), Peto included 679 men who were hired in 1933 or later, and who had been employed by the company for at least 10 years by 1972. Peto divided the workers into two cohorts: those first exposed before 1951 (Cohort 1, n = 424 men) and those first exposed during or after 1951 (Cohort 2, n = 255 men). The National Health Central Register and factory personnel followed the workers until 1978. The exposures in this textile factory involved chrysotile.

Although routine measurements of asbestos levels were not made prior to 1951, Peto *et al.* (1977) had estimated the workers' exposures in an earlier study. Between 1951 and 1961, a thermal precipitator was used to sample for asbestos, then was gradually replaced by membrane filters. In this study, Peto revised earlier estimates of asbestos exposure concentrations and reported mean levels in fibers/mL for six selected years as follows: 32.4 (1951), 23.9 (1956), 12.2 (1961), 12.7 (1966), 6.7 (1971), and 1.1 (1974). Peto *et al.* then used these values to calculate cumulative exposures. The average cumulative exposure for men first exposed to asbestos during or after 1951 (*i.e.*, Cohort 2) was 200–300 fiber-years/mL.

Peto (1980) confirmed earlier conclusions by Doll (1955) and Peto *et al.* (1977) that there was excess lung cancer mortality in this asbestos textile factory. Although Peto *et al.* (1977) suggested a dose-response relationship for lung cancer using measurements from a static dust sampler, Peto did not demonstrate such a dose-response relationship in this later study (1980).

f. Seidman et al., 1979 (With Update to OSHA in 1984)

Seidman *et al.* (1979) conducted a mortality study (1946–1977) of 820 men who worked in an amosite factory in New Jersey. This factory supplied the U.S. Navy with insulation for pipes, boilers, and turbines. The men in this study were first employed between 1941 and 1945 and were followed for 35 years. Due to wartime conditions, however, there was a changing composition of the workforce. Seidman *et al.* (1979) stated that—

> This resulted in a unique experience; men with a very limited duration of intense exposure to Amosite asbestos, followed by long observation * * *

The men were classified according to the time in which they came into direct contact with the amosite: Less than 1 month, 1 month, 2 months, 3–5 months, 6–11 months, 1 year, or 2 or more years. Thus, this cohort is unlike those of other studies where workers were exposed to asbestos for long periods, often 20 or more years.

In this amosite factory, there were no direct measurements of asbestos levels. The determination of asbestos concentrations was made solely by analogy with another factory in which air sampling was done in the late 1960's and in the 1970's. Seidman *et al.* reported that, in samples taken in this latter factory in October of 1971, asbestos counts averaged as high as 23 f/mL.

Seidman *et al.* (1979) demonstrated that the amosite workers were at risk of developing lung cancer and dying from this disease. Seidman *et al.* (1979) concluded that—

• Prolonged follow-up is necessary to evaluate the effects of asbestos on

health, especially with lower concentration or shorter duration exposures.

- Asbestos retained in tissues may continue to produce adverse effects long after the exposure may have stopped.
- The length of the latency period for asbestos-related diseases depends directly on the dosage and the age at which exposure takes place. For example, older workers will show a more pronounced and quicker effect than younger workers with the same level of exposure.
- The longer the time after first exposure to asbestos, the more pronounced the excesses in mortality.
- Reducing the asbestos exposure (lowering the dosage) can both delay the occurrence of adverse effects (*e.g.*, time to death) and lower the frequency of their occurrence (*e.g.*, fewer deaths).

In 1984, Seidman updated his earlier work by adding 593 cases involving deaths that occurred 5–40 years beyond each man's first amosite exposure. Seidman again developed a classification scheme, but now he based it on cumulative exposure to amosite and not on time alone. The exposure categories were less than 6, 6–11.9, 12–24.9, 25–49.9, 50–99.9, 100–149.9, 150–249.9, and 250 or more fiber-years/cc. Using this new information, he was able to demonstrate an exposure-response relationship for lung cancer mortality.

g. Selikoff et al., 1979.

Selikoff *et al.* (1979) conducted a mortality study (1943–1976) of 17,800 men who belonged to the insulation workers' union. Members of this insulation union worked mainly in construction in the United States and Canada, but some worked in refineries, industrial plants, shipyards, and power plants. Selikoff *et al.* (1979) described the content of the asbestos insulation as follows.

> Until approximately the early 1940s, chrysotile alone was utilized in the manufacture of the asbestos insulation products used by these men. Amosite began to be used in the mid-1930s in small quantities but became more widely utilized during World War II and subsequently.

The ages of men in this study ranged from 15 to over 85 years and Selikoff *et al.* (1979) established a series of ''age categories,'' each including a 5-year age span (*e.g.*, 15–19 years, 20–24 years, etc.) Those men age 85 or older were grouped together. The investigators identified the time at which each man was first exposed to asbestos and then separated the data into a series of categories based on how long it had been since their first exposure (*e.g.*, less than 20, 20–34, and 35 or more years ago).

Selikoff *et al.* (1979) reported that few measurements were made to assess asbestos levels in insulation work until the mid-1960's. For this reason, they estimated exposure levels using reconstructions of past work conditions and extrapolations of more current measurements to past conditions. They concluded that insulation workers would have been exposed to TWA concentrations of 4–12 f/mL.

Selikoff *et al.* (1979) concluded that the asbestos insulation workers were at ''extraordinary increased risk of death of cancer and asbestosis.'' The study had found an excessive number of lung cancers (486) in this cohort, particularly at 15–35 years after the first exposure to asbestos. This figure was even more striking when compared to the expected number of lung cancer cases (106) for this same group of men.

h. Weill et al., 1979.

Weill *et al.* (1979) conducted a mortality study of 5,645 men who had at least 1 month of continuous employment before January 1, 1970 in one of two asbestos cement building materials plants in New Orleans, Louisiana. The men in this study had worked at some time during the 1940's to the mid-1970's. The investigators followed this cohort for at least 20 years and found that—

> For both plants, 7 percent [of the men] were initially employed before 1940, 76 percent during the 1940s, and 17 percent during 1950 to 1954. Sixty percent were employed for less than one year, 24 percent for one to 10 years, and 16 percent for more than 10 years.

The asbestos exposures mainly involved chrysotile, although the two plants also processed crocidolite and amosite. The cement products were comprised of about 15–28 percent asbestos and some silica. Weill *et al.* (1979), however, did not provide the proportion of silica in the asbestos cement mixture.

Impinger sampling was conducted in this factory to determine asbestos levels. The sampling results were reported in millions of particles per cubic foot (mppcf). Based on sampling data, Weill *et al.* (1979) defined five categories of exposure in mppcf/year as follows: Less than 10, 11–50, 51–100, 101–200, and more than 200. OSHA (51 FR 22618) converted the original data of Weill *et al.* (1979) from mppcf/year to fiber-years/cc using a factor of 1:1.4, as given in the 1986 OSHA rule (51 FR 22617). This yielded the following exposure categories in fiber-years/cc: Less than 14, 15–70, 71–140, 141–280, more than 280.

Weill *et al.* (1979) found excess mortality due to cancers, mainly lung cancer, in men whose cumulative exposures were moderate (141–280 fiber-years/cc) to high (greater than 280 fiber-years/cc). About 25 percent of their cohort, however, was lost in the follow-up period. For the purpose of the study, Weill *et al.* assumed they were alive. This assumption may have led to an underestimation of lung cancer risk. For this reason, OSHA (51 FR 22618) stated its opinion as follows:

> * * * the presence of an excess risk of mortality from lung cancer could not be ruled out for the cohorts in these exposure categories. [The other three, lower exposure categories defined by Weill *et al.*, 1979.]

2. Mesotheliomas

a. *Finkelstein, 1983.*

We reviewed the most important aspects of this study above. (See section VI.A.1.) Based on death records, Finkelstein (1983) found 11 mesotheliomas among the total of 58 deaths in his study. The mean age at which these men were first exposed to asbestos was 25 years, and their mean latency period for mesotheliomas was 25 years. The mean age at death was 51 years, and none was over 60 years. This demonstrates that death follows quickly after this disease becomes evident.

Finkelstein noted that the rates of death from mesotheliomas were proportional to the magnitude of cumulative asbestos exposure, as shown in Table VI–2 below.

TABLE VI–2.—MESOTHELIOMAS MORTALITY RATES COMPARED TO EXPOSURE

Mesotheliomas mortality rates (per 1,000 man-years)	Estimated exposure range (fiber-years/mL)	Estimated mean exposure fiber-years/mL)
1.9	8–69	44

TABLE VI–2.—MESOTHELIOMAS MORTALITY RATES COMPARED TO EXPOSURE—Continued

Mesotheliomas mortality rates (per 1,000 man-years)	Estimated exposure range (fiber-years/mL)	Estimated mean exposure fiber-years/mL)
4.9	70–121	92
11.9	122–420	180

Based on the exposure-response data, Finkelstein concluded, ''* * * the relation is compatible with a linear function through the origin * * *.'' Accordingly, Finkelstein's data suggest the lack of a threshold for mesotheliomas.

b. *Peto et al., 1982.*

Peto *et al.* (1982) evaluated mesothelioma mortality (1967–1979) in the same group of 17,800 insulation workers previously described by Selikoff *et al.* (1979). We reviewed the salient features of Selikoff *et al.* (1979) above. (See section VI.A.1.) Members of this insulation workers' union worked in the United States and Canada and were exposed to chrysotile and amosite.

Peto *et al.* (1982) reported ''a high incidence'' of mesotheliomas in this cohort. There were 236 deaths from mesotheliomas, of which 87 were pleural and 149 were peritoneal. They closely examined each man's age at the first asbestos exposure and the number of years since his first exposure. Peto *et al.* (1982) concluded that mesothelioma mortality was strongly dependent on the number of years since the first asbestos exposure, but was independent of the age at the first exposure. They stated—

> Mesothelioma death rates in asbestos workers appear to be proportional to the third or fourth power of time * * * Age at first exposure has little or no influence, however, which supports the multi-stage model of carcinogenesis * * * mesotheliomas may constitute a high proportion of cancer deaths resulting from early exposure to asbestos.

Peto *et al.* (1982) also reviewed mesothelioma mortality data from several other studies in addition to those from Selikoff *et al.* (1979). They were interested in determining if they could establish a relationship between deaths from mesotheliomas and fiber type. Although there were some data to suggest that deaths from mesotheliomas were more common in men who worked with amphiboles (*e.g.*, crocidolite), Peto *et al.* (1982) were cautious when drawing conclusions. They stated that—

> Chemical [and physical] differences between different fibre types may also be important, but until carcinogenic effects of such differences have been demonstrated, it would seem sensible to concentrate on fibre dimension rather than mineral type in developing dose-response relationships. * * * It may therefore be dangerously optimistic to attribute the substantial incidence of pleural mesothelioma among chrysotile factory workers to occasional crocidolite exposure * * *

c. *Seidman et al. 1979 (With Update to OSHA in 1984).*

We reviewed the salient features of this study and its update above. (See section VI.A.1.) Based on death records, Seidman *et al.* (1979) found 14 mesotheliomas among the total 528 deaths in their study. They reported an additional three mesotheliomas in their update. OSHA commented that this was ''a finding of great significance given the rarity of the disease'' (51 FR 22617).

d. *Selikoff et al. (1979).*

The salient features of this study were reviewed above. (See section IV.A.1.) Based on death records, Selikoff *et al.* (1979) found 38 mesotheliomas (pleural and peritoneal) in their initial cohort of 632 asbestos insulation workers. There were 223 deaths in this part of their study (1943–1976). Some of these deaths from mesotheliomas occurred 20–34 years after the first exposure to asbestos, described by the authors as ''duration from onset.'' For most men who died from mesotheliomas, however, it was 35 or more years after their first exposure.

In the second and much larger cohort (n = 17,800) of Selikoff *et al.* (1979), there were 175 deaths due to mesotheliomas of the total 2,271 deaths in this group. Some (14) of these deaths caused by mesotheliomas occurred 15–24 years after the first asbestos exposure, while most (161) were recorded 25 or more years after the first exposure. Selikoff *et al.* (1979) had been unable to provide expected death rates for mesotheliomas due to their rarity in the general population. This study demonstrated an unequivocal association between mesotheliomas and prior asbestos exposure. In the 25 years since this paper was published, there has been no evidence to the contrary.

3. Asbestosis

a. *Berry and Lewinsohn, 1979.*

Berry and Lewinsohn (1979) studied the same group of textile workers that was originally described by Berry *et al.* (1979) and, thus, a short summary of the original paper is presented here.

Berry *et al.* (1979) studied a group of 379 men who worked in an asbestos textile factory located in northern England. Most of the worker exposures involved chrysotile, although this site also used crocidolite. Asbestos fiber levels were measured in this factory since 1951 and had been estimated since 1936. Berry *et al.* defined two cohorts. One included men who were first employed between 1933 and 1950, and were still working in this textile factory in 1966. The other included men who were employed after 1966, and had worked for at least 10 years in this textile factory. Berry *et al.* (1979) found relationships between cumulative asbestos exposure and crepitations (abnormal lung sounds), possible asbestosis, and certified asbestosis.

As noted above, Berry and Lewinsohn (1979) used data from the same textile factory as that described by Berry *et al.* (1979); but Berry and Lewinsohn (1979) defined two different cohorts. One included men who were first employed before 1951. The other included men first employed after 1950. Berry and Lewinsohn (1979) plotted the incidence of cases of possible asbestosis against the cumulative asbestos exposure up to 1966. They stated—

> The data are compatible with a linear relationship through the origin [indicating no threshold], with no statistically significant difference between the two groups [cohorts].

b. *Finkelstein, 1982.*

Finkelstein (1982) studied a group of 201 men who worked in a factory in Ontario, Canada, that manufactured asbestos-cement pipe and rock-wool insulation. Finkelstein defined two subsets in his study population: A group of 157 production workers and a group of 44 maintenance workers. The men selected to participate in this study worked in the pipe or board shop for at least one year prior to 1961 and had been employed at least 15 years. Most of the asbestos exposures involved

chrysotile and crocidolite, both of which were mixed with cement and silica.

Between the 1940's and 1968, impinger sampling was conducted to assess total dust levels. In 1969/1970, the company began to conduct quarterly personal sampling for asbestos using the membrane filter method. Finkelstein used the results of such sampling as baseline values for various jobs.

Of the workers in this study, 39 percent of those in production and 20 percent of those in maintenance had certified asbestosis. Finkelstein demonstrated that there was a relationship between cumulative asbestos exposure and certified asbestosis. He describes the exposure-response curve as sigmoidal, a shape commonly observed in toxicology. The curve also appears to intersect the origin, which suggests a lack of threshold.

B. Models Selected by OSHA (1986) for Specified Endpoints and for the Determination of Its PEL and STEL

Based on their critical review of the studies described above (see section VI.A), OSHA (51 FR 22631) concluded—

> * * * asbestos exposure causes lung disease, respiratory cancer, mesothelioma, and gastrointestinal cancer. * * * excess disease risk has been observed at cumulative exposures at or below those permitted by the existing OSHA 8-hour permissible exposure limit [PEL] of 2 f/cc. In addition, OSHA has made risk estimates of the excess mortality from lung cancer, mesothelioma, gastrointestinal cancer, and the incidence of asbestosis using mathematical models * * *

The following is a summary of the mathematical models that OSHA used in its asbestos risk assessment.

1. Lung Cancer

For lung cancer, OSHA (1986) relied on a relative risk model that was linear in dose, as described by the following equation:

$R_L = R_E[1 + (K_L)(f)(d_{t-10})]$

Where:

R_L = Predicted lung cancer mortality.
R_E = Expected lung cancer mortality in the absence of asbestos exposure.
K_L = Slope of the dose-response relationship for lung cancer.
f = Asbestos fiber concentration (f/cc).
d = Duration of the exposure (minus 10 years to account for latency).

The following list gives the K_L values for the eight studies used by OSHA. OSHA (51 FR 22637) used $K_L = 0.01$, the geometric mean of these eight studies, in their risk assessment.

Study	K_L
Berry and Newhouse, 1983	0.0006
Dement *et al.*, 1982	0.042
Finkelstein, 1983	0.048
Henderson and Enterline, 1979	0.0047
Peto, 1980	0.0076
Seidman *et al.*, 1979; Seidman, 1984	0.045
Selikoff *et al.*, 1979	0.020
Weill *et al.*, 1979	0.0033

2. Mesotheliomas

For mesotheliomas, OSHA (1986) relied on an absolute risk model that is linear in dose, but exponentially related to the time after the first exposure to asbestos. The following three equations describe the risk.

$AR_M = (f)(K_M)[(t-10)^3 - (t-10-d)^3]$, for $t > 10 + d$

$AR_M = (f)(K_M)[(t-10)^3]$, for $10 + d > t > 10$

$AR_M = 0$, for $10 > t$

Where:

R_M = Excess risk of mesotheliomas.
f = Asbestos fiber concentration.
K_M = Slope of the dose-response relationship for mesotheliomas.
d = Duration of the exposure.
t = Time after the first exposure to asbestos.

The following list gives the K_M values for the four studies used by OSHA. OSHA (51 FR 22640 and 22642) used $K_M = 1 \times 10^{-8}$, the ratio of K_M/K_L, rather than $K_M = 2.91 \times 10^{-8}$, the geometric mean of these four studies, to account for the bias in its analysis and avoid overestimation of mesotheliomas in their risk assessment.

Study	$K_M(10^{-8})$
Finkelstein, 1983	12
Peto *et al.*, 1982	0.7
Seidman *et al.*, 1979; Seidman, 1984	5.7
Selikoff *et al.*, 1979	1.0

3. Asbestosis

For asbestosis, OSHA (1986) relied on an absolute risk model that was linear in cumulative dose. The following equation describes the lifetime incidence of asbestosis:

$R_A = m(f)(d)$

Where:

R_A = Predicted lifetime incidence of asbestosis.
f = Asbestos fiber concentration.
d = Duration of the exposure.
m = Slope of the linear regression.

OSHA stated (48 FR 51132), ''the best estimates of asbestosis incidence are derived from the Finkelstein data ''and OSHA did not rely on the values for the slope as determined by Berry and Lewinsohn (1979). Thus, based on Finkelstein's data (1982) alone, the slope (m) is 0.055 and the equation becomes $R_A = 0.055(f)(d)$.

Using this linear model, OSHA also calculated estimates of lifetime asbestosis incidence at five exposure levels of asbestos (*i.e.*, 0.5, 1, 2, 5, 10 f/cc) and published Table VI–3 (48 FR 51132), which we have reproduced below. OSHA concluded that for lifetime exposures to asbestos at concentrations of 2 or 0.5 f/cc, there would be a 5 percent or a 1.24 percent incidence of asbestosis, respectively (48 FR 51132). Based on Finkelstein's linear relationship for lifetime asbestosis incidence, OSHA later stated (51 FR 22646) that, ''Reducing the exposure to 0.2 f/cc [a concentration not included in Table VI–3] would result in a lifetime incidence of asbestosis of 0.5%.''

TABLE VI–3.—ESTIMATES OF LIFETIME ASBESTOSIS INCIDENCE

Exposure level, fiber/cc	Percent (%) Incidence		
	Finkelstein	Berry (employed before 1951)	Berry (first employed after 1950)
0.5	1.24	0.45	0.35
1	2.49	0.89	0.69
2	4.97	1.79	1.38
5	12.43	4.46	*3.45
10	24.86	8.93	6.93
Slope	0.055	0.020	0.015

TABLE VI–3.—ESTIMATES OF LIFETIME ASBESTOSIS INCIDENCE—Continued

Exposure level, fiber/cc	Percent (%) Incidence		
	Finkelstein	Berry (employed before 1951)	Berry (first employed after 1950)
R^2	0.975	0.901	0.994

* Note: 1.38 in original table was a typographical error. The text (48 FR 51132) and the regression formula indicate that 3.45 is the correct percent.

C. OSHA's Selection of Its PEL (0.1 f/cc)

Using the models described above in section VI.B., OSHA estimated cancer mortality for workers exposed to asbestos at various cumulative exposures (*i.e.*, combining exposure concentration and duration of exposure). These data were published in its 1986 risk assessment (51 FR 22644), which we have reproduced in the following Table VI–4.

It is clear from Table VI–4 that the estimated mortality from asbestos-related cancer decreases significantly by lowering exposure. This is true regardless of the type of cancer: lung, pleural, peritoneal, or gastrointestinal. Although excess relative risk is linear in dose, the excess mortality rates in Table VI–4 are not strictly linear in dose.[68]

TABLE VI–4.—ESTIMATED ASBESTOS-RELATED CANCER MORTALITY PER 100,000 BY NUMBER OF YEARS EXPOSED AND EXPOSURE LEVEL

Asbestos fiber concentration (fiber/cc)	Cancer Mortality per 100,000 Exposed			
	Lung	Mesothelioma	Gastro-intestinal	Total
1-year exposure				
0.1	7.2	6.9	0.7	14.8
0.2	14.4	13.8	1.4	29.6
0.5	36.1	34.6	3.6	74.3
2.0	144	138	14.4	296.4
4.0	288	275	28.8	591.8
5.0	360	344	36.0	740.0
10.0	715	684	71.5	1,470.5
20-year exposure				
0.1	139	73	13.9	225.9
0.2	278	146	27.8	451.8
0.5	692	362	69.2	1,123.2
2.0	2,713	1,408	271.3	4,392.3
4.0	5,278	2,706	527.8	8,511.8
5.0	6,509	3,317	650.9	10,476.9
10.0	12,177	6,024	1,217.7	13,996.7
45-year exposure				
0.1	231	82	23.1	336.1
0.2	460	164	46.0	670.0
0.5	1,143	407	114.3	1,664.3
2.0	4,416	1,554	441.6	6,411.6
4.0	8,441	2,924	844.1	12,209.1
5.0	10,318	3,547	1,031.8	14,896.8
10.0	18,515	6,141	1,851.5	26,507.5

OSHA's PEL for asbestos was 2 f/cc in 1983. Table VI–4 shows that after 45 years of exposure to asbestos at this concentration, there would be an estimated 6,411.6 deaths (per 100,000 workers). This is the sum of deaths from 4,416 lung cancers, 1,554 mesotheliomas, and 441.6 gastrointestinal cancers. By lowering its PEL to 0.1 f/cc, OSHA decreased the risk of cancer mortality to an estimated 336.1 deaths (per 100,000 workers), which is the sum of deaths from 231 lung cancers, 82 mesotheliomas, and 23.1 gastrointestinal cancers.

As shown above in Table VI–3, there is also a significant reduction in the incidence of asbestosis by lowering exposures. For example, the lifetime incidence of asbestosis would be reduced from 4.97 percent (4,970 cases per 100,000 workers) at 2 f/cc to 1.24 percent (1,240 cases per 100,000 workers) at 0.5 f/cc. Using the linear model described above [R_A = 0.055(f)(d)], the incidence of asbestosis can also be calculated at a concentration of 0.1 f/cc (not included by OSHA in Table VI–4) following 45 years of exposure to asbestos. This yields 0.25 percent, or 250 cases per 100,000 workers. Thus, by lowering the 8-hour TWA PEL from 2 f/cc to 0.1 f/cc, we

[68] Nicholson, p. 53, 1983.

would reduce the lifetime asbestosis risk from 4,970 cases to 250 cases per 100,000 exposed miners.

Based on these reductions in cancer deaths and asbestosis cases, OSHA demonstrated that a lowering of the PEL below 2 f/cc would ''substantially reduce that risk'' (51 FR 22612). OSHA also noted—

> Evidence in the record ''has shown that employees exposed at the revised standards'' PEL of 0.2 fiber/cc [OSHA's 1986 standard] remain at significant risk of incurring a chronic exposure-related disease, but considerations of feasibility have constrained OSHA to set the revised PEL at the 0.2 fiber/cc level.

When OSHA further reduced its PEL from 0.2 to 0.1 f/cc in 1994, this statement was still true and the PEL continued to reflect technical feasibility issues. OSHA stated (59 FR 40967)—

> The 0.1 f/cc level leaves a remaining significant risk. However as discussed below [in OSHA's 1994 Final Rule] and in earlier documents, OSHA believes that this is the practical lower limit of feasibility for measuring asbestos levels reliably.

D. Applicability of OSHA's Risk Assessment to the Mining Industry

In its asbestos emergency temporary standard, and in its proposed, amended, and final asbestos rules (1983, 1984, 1986, 1992, 1994), OSHA discussed few mining and milling studies and excluded these data in their risk assessment. OSHA (51 FR 22637) stated,

> The distinct nature of mining-milling data (and hence the estimate of KL from these data) has been considered earlier. There is some evidence that risks in the asbestos mining-milling operations are lower than other industrial operations due to differences in fiber size. ''Thus, in determining the KL for the final rule, the data from mining and milling processes were not considered.

OSHA suggested that the proportionality constants (*i.e.*, K_L, K_M), also known as the slopes of the respective dose response curves, from mining and milling studies are lower than the slopes for the studies included in its risk assessment (51 FR 22632 and 22637). This difference in slopes may suggest that the risk of asbestos-related cancers is lower in miners and millers. Because there is remaining significant risk of asbestos-related cancer at the OSHA PEL of 0.1 f/cc, we may be accepting a higher estimate of risk by relying on OSHA's quantitative risk assessment that excluded mining and milling studies.

Although we are relying on OSHA's risk assessment, we also reviewed the scientific literature to identify studies that involved the exposure of miners and millers to asbestos. Most of these studies were conducted in Canada, although some have been conducted in Australia, India, Italy, South Africa, and the United States. Table VI–5 lists some of these mining and milling studies, in chronological order, and gives the salient features of each study. These studies are in the rulemaking docket.

TABLE VI–5.—SELECTED STUDIES INVOLVING MINERS EXPOSED TO ASBESTOS

Author(s), year of publication	Study group, type of asbestos	Major finding(s) or conclusion(s)
Rossiter *et al.*, 1972	Canadian miners and millers, Chrysotile	Radiographic changes (opacities) related to age and exposure.
Becklake, 1979	Canadian miners and millers, Chrysotile	Weak relationship between exposure and disease.
Gibbs and du Toit, 1979	Canadian and South African miners, Chrysotile.	Need for workplace epidemiologic surveillance and environmental programs.
Irwig *et al.*, 1979	South African miners, Amosite and crocidolite	Parenchymal radiographic abnormalities preventable by reduced exposure.
McDonald and Liddell, 1979	Canadian miners and millers, Chrysotile	Lower risk of mesotheliomas and lung cancer from chrysotile than crocidolite.
Nicholson *et al.*, 1979	Canadian miners and millers, Chrysotile	Miners and millers: At lower risk of mesotheliomas, at risk of asbestosis (as factory workers and insulators), at risk of lung cancer (as factory workers).
Rubino *et al.*, *Ann NY Ac Sci* 1979	Italian miners, Chrysotile	Role of individual susceptibility in appearance and progression of asbestosis.
Rubino *et al.*, *Br J Ind Med* 1979	Italian miners, Chrysotile	Elevated risk of lung cancer.
Solomon *et al.*, 1979	South African miners, Amosite and Crocidolite	Sign of exposure to asbestos: Thickened interlobar fissures.
McDonald *et al.*, 1980	Canadian miners and millers, Chrysotile	No statistically significant increases in SMRs.
McDonald *et al.*, 1986	U.S. miners, Tremolite	A. Increased risk of mortality from respiratory cancer.
McDonald *et al.*, 1980	U.S. miners, Tremolite	B. Increased prevalence of small opacities by retirement age.
Cookson *et al.*, 1986	Australian miners and millers, Crocidolite	No threshold dose for development of radiographic abnormality.
Amandus *et al.*, 1987	U.S. miners, and millers, Tremolite-Actinolite	Part I: Increased prevalence of radiographic abnormalities associated with past exposure.
Amandus and Wheeler, 1987	U.S. miners, and millers, Tremolite-Actinolite	Part II: Increased mortality from nonmalignant respiratory disease and lung cancer.
Amandus *et al.*, 1987	U.S. miners, and millers, Tremolite-Actinolite	Part III: Exposures below 1 f/cc after 1977, up to 100–200X higher in 1960's and 1970's.
Armstrong *et al.*, 1988	Australian miners and millers, Crocidolite	Increased mortality from mesotheliomas and lung cancer.
Enarson *et al.*, 1988	Canadian miners, Chrysotile	Increased cough, breathlessness, abnormal lung volume and capacity.
McDonald *et al.*, 1988	U.S. miners, and millers, Tremolite	Low exposure and no statistically significant SMRs.
McDonald *et al.*, 1993	Canadian miners and millers, Chrysotile	Increased SMRs for lung cancer and mesotheliomas as cohort aged.

TABLE VI–5.—SELECTED STUDIES INVOLVING MINERS EXPOSED TO ASBESTOS—Continued

Author(s), year of publication	Study group, type of asbestos	Major finding(s) or conclusion(s)
Dave *et al.*, 1996	Indian miners and millers, Chrysotile	Higher exposures in surface than underground mines; higher exposures in mills than mines; restrictive lung impairment and radiologic parenchymal changes more common in millers.
McDonald *et al.*, 1997	Canadian miners and millers, Chrysotile	Risk of mesotheliomas related to geography and mineralogy of region; mesotheliomas caused by amphiboles.
Nayebzadeh *et al.*, 2001	Canadian miners and millers, Chrysotile	Respiratory disease related to regional differences in fiber concentration and not dimension.
Ramanathan and Subramanian, 2001	Indian miners and millers, Chrysotile and tremolite.	Increased risk of cancer, restrictive lung disease, radiologic changes, and breathing difficulties; more common in milling.

These studies of miners and millers provide further evidence of potential adverse health effects from asbestos exposure. MSHA found that many of the observations presented in these studies (*e.g.*, age of first exposure, latency, radiologic changes) are consistent with those from studies of factory and insulation workers. The exposure to asbestos, a known human carcinogen, results in similar disease endpoints regardless of the occupation that has been studied.

E. Significance of Risk

1. Defining ''Significant'' Risk: The Benzene Case

We (MSHA) believe that this proposed rule for asbestos meets the requirements set forth by the OSHA Benzene Case described below. We have relied on OSHA's risk assessment, the studies used by OSHA in its development, and our review of more recent studies and mining studies, which further support OSHA's findings.

In the Benzene Case, *Industrial Union Department, AFL–CIO* v. *American Petroleum Institute et al.* (448 U.S. 607, 1980), the U.S. Supreme Court ruled that, prior to the issuance of a new or revised standard regulating occupational exposures to toxic materials, such as asbestos, OSHA is required to make two findings:

- They must determine that a ''significant'' health risk exists, and
- They must demonstrate that the new standard will reduce or eliminate that risk.

In the preamble to its 1994 final asbestos rule (59 FR 40966, 1994), OSHA provided an interpretation of a ''significant health risk''. They stated,

> OSHA has always considered that a working lifetime risk of death of over 1 per 1000 from occupational causes is significant. This has been consistently upheld by the courts.

When OSHA lowered its PEL for asbestos from 2 to 0.2 f/cc (1986), and then to 0.1 f/cc (1994), they used this definition of a ''significant health risk'' and made the two findings as outlined in the Benzene Case. With respect to the first finding, OSHA estimated the excess lifetime cancer risk to be 3.4 deaths per 1,000 workers exposed to asbestos at 0.1 f/cc for a working lifetime. OSHA stated (51 FR 22646),

> The finding that a significant risk exists is supported by OSHA's quantitative risk assessment, which is based upon studies of asbestos-exposed worker populations.

With respect to the second finding, OSHA went on to say (51 FR 22647),

> In accordance with the second element [finding, *sic*] of the Supreme Court's Benzene decision on the determination of significant risk, OSHA has determined that reducing the permissible exposure limit for asbestos [from 2 f/cc, *sic*] to 0.2 f/cc is reasonably necessary to reduce the cancer mortality risk from exposure to asbestos. * * * significant risks of asbestos-related cancer mortality and asbestosis are not eliminated at the exposure level that is permitted under the new standard [0.2 f/cc, *sic*]; however, the reduction in the risk of asbestos-related death and disease brought about by promulgation of the new standard is both significant and dramatic.

OSHA concluded that the lowering of their PEL from 0.2 to 0.1 f/cc would ''further reduce a significant health risk'' (59 FR 40966–40967).

2. Demonstrating Significant Health Risk for the Miner

The Federal Mine Safety and Health Act of 1977 (Mine Act), Title I, section 101(a), requires MSHA

> * * * to develop, promulgate, and revise as may be appropriate, improved mandatory health or safety standards for the protection of life and prevention of injuries in coal or other mines.

Furthermore, section 101(a)(6)(A) of the Mine Act requires MSHA to set health or safety standards—

> * * * on the basis of the best available evidence that no miner shall suffer material impairment of health or functional capacity even if such miner has regular exposure to the hazards * * * for the period of his working lifetime.

A significant health risk exists for miners exposed to asbestos at our existing 8-hour full-shift exposure limit of 2 f/cc. Miners, like the insulation workers in the studies cited by OSHA, are at risk of developing lung cancer, mesotheliomas, and asbestosis. These effects are significant and clearly constitute a material impairment of health and functional capacity. They also emphasize the need for us to lower our PEL. By lowering the 8-hour full-shift exposure limit to 0.1 f/cc, we would significantly reduce the risk of asbestos-related lung cancers, mesotheliomas, and asbestosis.

3. Using the Experience of OSHA and Current Studies to Demonstrate Significant Risk

Under the Mine Act, section 101(a)(6)(A), MSHA must base its health and safety standards on—

> * * * the latest available scientific data in the field, the feasibility of the standards, and experience gained under this and other health and safety laws.

In our proposed rule for asbestos, we have relied heavily on the experience of OSHA, which demonstrates the feasibility of a 0.1 f/cc exposure limit for asbestos. We believe that this limit is technically and economically feasible for the mining industry. (See section VIII.B. Feasibility.) We also have obtained and reviewed the latest available scientific data on the health effects of asbestos exposure. MSHA concludes that these studies provide further support of the significant risk of

adverse health effects following exposure to asbestos.

Using OSHA's risk assessment, we have demonstrated that a lowering of our 8-hour full-shift exposure limit from 2 to 0.1 f/cc would significantly reduce the risk of asbestos-related disease in miners. MSHA believes that other existing standards help reduce the remaining significant risk at this new 0.1 f/cc PEL. For example, MSHA requires the use of engineering and work practice controls to reduce a miner's exposure to the PEL and, until this concentration is reached, the use of an approved respirator. MSHA also requires the use of personal protective clothing and equipment, as necessary, for equipment repair and for construction or demolition activities [69] and hazard communication and task training.[70] As long as miners are likely to encounter asbestos, miners and mine operators will need to follow adequate safety procedures to ensure a reduction of exposures. We anticipate risk reduction to occur by the use of engineering controls and accepted industrial hygiene administrative controls that effectively avoid disturbing asbestos on mine property.

VII. Section-by-Section Discussion of Proposed Rule

In the ANPRM, we asked commenters for supporting information to help us evaluate whether or not to—

- Lower our asbestos PEL,
- Revise our analytical methods and criteria to make them more appropriate for the mining industry, and
- Implement safeguards to limit take-home exposures.

We received almost 100 comments, considered the commenters' concerns, and discussed them in the following sections.

To make the standard easier to read, we have divided the requirements in the proposed standards into three paragraphs: *Definitions, Permissible Exposure Limits (PELs)*, and *Measurement of Airborne Fiber Concentration*. For §§ 56/57.5001(b), the metal and nonmetal asbestos standards, we numbered the paragraphs (b)(1), (b)(2), and (b)(3). For § 71.702, the coal asbestos standard, we assigned the paragraphs letters (a), (b), and (c).

A. Sections 56/57.5001(b)(1) and 71.702(a): Definitions

Our existing definition of asbestos is consistent with several Federal agencies' regulatory provisions, including OSHA's. As discussed in section II.B of this preamble and in the existing regulatory language, asbestos is not a definitive mineral name, but rather a commercial name for a group of minerals with specific characteristics. Our existing standards clearly state that, ''when crushed or processed, [asbestos] separate[s] into flexible fibers made up of fibrils'' [§§ 56/57.5001(b)]; and ''does not include nonfibrous or nonasbestiform minerals'' (§ 71.702). Although there are many asbestiform minerals, the term ''asbestos'' in our existing standards is limited to the following six (*Federal Six*): [71]

- Chrysotile (serpentine asbestos, white asbestos);
- Amosite (cummingtonite-grunerite asbestos, brown asbestos);
- Crocidolite (riebeckite asbestos, blue asbestos);
- Anthophylite asbestos (asbestiform anthophyllite);
- Tremolite asbestos (asbestiform tremolite); and
- Actinolite asbestos (asbestiform actinolite).

Substantive changes to the definition of asbestos are beyond the scope of this proposed rule. We recognize that there are limitations in the general analytical methods, such as PCM and TEM, used to identify and quantify the *Federal Six*. Without the use of more complicated and costly analyses, it may not always be possible to differentiate other chemically similar amphiboles from the *Federal Six*. Also, the International Minerals Association has proposed more specific nomenclature in the literature to classify some of the amphiboles.[72] We decline to adopt such classifications here, because they are beyond the scope of this proposed rule, and propose to continue to use the existing regulatory designations. However, we are proposing a few nonsubstantive changes to the existing regulatory language to clarify the standard. These wording changes would have no impact on the minerals that we regulate as asbestos from that contained in the existing standards. This proposed rule would—

- Clarify the term ''amosite,'' a name tied to asbestos from a specific geographical region, by adding the mineralogical term ''cummingtonite-grunerite asbestos'' parenthetically.
- Add a definition for fiber to be more consistent with OSHA. This change would clarify that the dimensional criteria in our existing standards refer to the asbestiform habit of the listed minerals.
- Conform the asbestos standards for metal and nonmetal mines, surface coal mines, and the surface work areas of underground coal mines by using the same structure and wording in the rule text. For example, we retain the descriptive language ''Asbestos is a generic term for a number of hydrated silicates that, when crushed or processed, separate into flexible fibers made up of fibrils'' from the metal and nonmetal standards rather than the comparable language from the coal standards. We believe that this descriptive language assists mine operators in understanding the scope of the standard.

MSHA's ANPRM did not specifically solicit information about which asbestiform minerals we should regulate. Even so, some commenters suggested that MSHA should expand its definition of asbestos to include other asbestiform minerals, so long as our analytical method excluded the counting of cleavage fragments. One commenter recommended that the PEL be reduced not only for the six currently regulated asbestos minerals, but also for other amphibole minerals in their asbestiform habit. NIOSH commented that cleavage fragments of the serpentine minerals antigorite and lizardite and amphibole minerals contained in the series cummingtonite-grunerite, tremolite-ferro-actinolite, and glaucophane-riebeckite should be counted as asbestos if they meet the counting requirements for a fiber (3:1 aspect ratio and greater than 5 μm in length). Another commenter asked that MSHA not include nonasbestiform fibrous minerals and mineral cleavage fragments when we perform microscopic analysis of samples.

Most commenters did not want MSHA to make changes to the fibers regulated as asbestos in the existing standards. Specifically, they do not want us to address other asbestiform amphiboles found in mineral deposits because they may not pose the same health problems that asbestos does. Some said that it would be unreasonable and expensive to try to meet exposure limits for all these minerals. Other commenters at MSHA's public hearing in New York (2002) stated that, whatever they are called, these minerals cause illness.

At this time, we decline to propose substantive changes to the definition of asbestos as suggested by some commenters. These changes are beyond the scope of this rulemaking. We will continue to monitor the toxicological, epidemiological, and mineralogical research studies and other new

[69] 30 CFR 56/57.5005, 56/57.15006, and 71.701

[70] 30 CFR parts 46, 47, and 48.

[71] ATSDR, p.136, 2001; NIOSH Pocket Guide, 2003.

[72] Leake *et al.*, 1997.

information relevant to protecting the health of miners.

B. Sections 56/57.5001(b)(2) and 71.702(b): Permissible Exposure Limits (PELs)

MSHA currently limits a miner's 8-hour TWA, full-shift exposure to 2.0 f/cc over a full shift; and limits a miner's short-term exposure to 10 f/cc over a 15-minute sampling period for metal and nonmetal miners and 10 f/cc for a total of one hour in an 8-hour day for miners at surface work areas of coal mines. We are proposing to adopt OSHA's 8-hour TWA, full-shift exposure limit of 0.1 f/cc and their 30-minute excursion limit of 1.0 f/cc for the mining industry. These actions would reduce by almost 20-fold the risk of asbestos-related deaths from a lifetime exposure at MSHA's existing permissible exposure limits. The proposed exposure limits, however, were based on feasibility and would not completely eliminate the risk. We believe that the proposed excursion limit would help reduce the residual risk from long-term exposure at the 0.1 f/cc 8-hour TWA, full-shift exposure limit.

As noted by the OIG, the continued occurrence of asbestos-related diseases and deaths among miners emphasizes the need to reduce asbestos exposures. MSHA's recent field sampling data (2000 through 2003) show that 2 percent of the total number of MSHA's samples exceed OSHA's PEL of 0.1 f/cc based on TEM analysis. This same data indicate that 10 percent of the samples exceed OSHA's PEL of 0.1 f/cc based on PCM.

MSHA's asbestos ANPRM requested information to help us determine appropriate exposure limits for the mining industry, considering the health risk and technological and economic feasibility. We specifically asked what would be an appropriate agency action considering these levels, and if OSHA's asbestos exposure limits would afford sufficient protection to miners. Most commenters supported our adoption of OSHA's exposure limits.

As discussed below in section VII.C of this preamble, we are proposing to incorporate the generic elements of PCM analytical methods for asbestos exposure monitoring by referencing Appendix A of OSHA's asbestos standard (29 CFR 1910.1001). Appendix A lists both NIOSH 7400 and OSHA ID 160 as examples of analytical methods that meet the equivalency criteria in OSHA's asbestos standard. The evaluation or inclusion of other protocols that deviate from the criteria for counting fibers in our existing standards is beyond the scope of this rulemaking.

1. Sections 56/57.5001(b)(2)(i) and 71.702(b)(1): 8-Hour Time-Weighted Average (TWA), Full-Shift Exposure Limit

Our sampling results indicate that there is not widespread overexposure to asbestos in the mining industry. Recognizing this low exposure, many industry commenters generally supported reducing the PEL for asbestos to the OSHA level of 0.1 f/cc, if MSHA also ensured that the analytical method only counted asbestos fibers. Labor representatives supported reducing the PEL for asbestos to the OSHA level of 0.1 f/cc and recommended that MSHA propose additional requirements from the OSHA asbestos standard.

Even though there was general agreement among the commenters to the ANPRM that MSHA should adopt OSHA's asbestos exposure limits, some commenters from a community association expressed concern about asbestos originating at a local mine. They seemed concerned not only with the health of miners, but also with exposures of people in relative proximity to the mining operations. They believe that any level of airborne asbestos is unacceptable.

While we are concerned about the spread of asbestos from mine sites into the atmosphere, asbestos occurs naturally in many types of soils and ore bodies. Although comments concerning the asbestos exposure of those living close to a mining operation fall outside the scope of this rule, the proposed reduction in the permissible exposure limits may reduce environmental levels as well.

We are proposing an 8-hour TWA, full-shift exposure limit of 0.1 f/cc. This limit would significantly reduce the risk of material impairment of health or functional capacity for miners exposed to asbestos.

2. Sections 56/57.5001(b)(2)(ii) and 71.702(b)(2): Excursion Limit

As previously discussed, asbestos poses a long-term health risk to exposed workers. There are no toxicological data identifying a ''dose-rate'' [73] health effect from exposure to airborne concentrations of asbestos. ''Dose-rate'' effect means that a specific dose can cause different health problems depending on the length of exposure. For example, asbestos does not seem to have a ''dose-rate'' effect because exposure to a high concentration over a short time period poses no greater risk of an adverse health effect than if the worker received the same dose at a lower concentration over a longer time period. An excursion limit sets boundaries for peak episodes of exposure that are not based on toxicological data. We are proposing an excursion limit for asbestos to help maintain the average airborne concentration below the full-shift exposure limit. For example, the 8-hour, TWA airborne asbestos concentration would be 0.06 f/cc for miners exposed to one 30-minute excursion per day at 1.0 f/cc and 0.13 f/cc for miners exposed to two 30-minute excursions per day at 1.0 f/cc.

In the ANPRM, we requested comments on an appropriate level for a short-term exposure limit (67 FR 15134). We specifically asked whether adopting the OSHA limit of 1 f/cc over 30 minutes would afford sufficient protection to miners in light of the health risk and the technical and economic feasibility of such a limit. Commenters offered no objections to adopting OSHA's excursion limit for airborne asbestos, and some agreed that this level is appropriate.

a. *OSHA's Short-Term Exposure Limit.*

When OSHA issued its 1986 asbestos standard, it decided not to issue an explicit short-term exposure limit (STEL). OSHA stated the basis for its decision (51 FR 22709) as follows.

> To summarize, OSHA is not promulgating a short-term exposure limit for asbestos because toxicological and dose-response evidence fail to show that short-term exposure to asbestos is associated with an independent or greater adverse health effect than is exposure to the corresponding 8-hour TWA level; that is, there is no evidence that exposure to asbestos results in a ''dose-rate'' effect. This is reflected in OSHA's risk models for lung cancer and mesothelioma, which associate health risk with cumulative dose. The decision not to promulgate a short-term exposure limit for asbestos is consistent with OSHA's recent policy decision described in the Supplemental Statement of Reasons for the Final Rule for Ethylene Oxide (50 FR 64) in which OSHA established that short-term exposure limits for toxic substances are not warranted in the absence of health evidence demonstrating a dose-rate effect.

OSHA's decision not to issue a STEL was challenged in *Public Citizen Health Research Group* v. *OSHA* (796 F.2d 1505), 1986. The U.S. Court of Appeals for the District of Columbia held that the Occupational Safety and Health Act compels OSHA to adopt a short-term limit, if the rulemaking record shows that it would further reduce a significant health risk and is feasible to implement, regardless of whether the record supports a ''dose-rate'' effect. Subsequently, OSHA found that

[73] OSHA (51 FR 22709), 1986.

compliance with a short-term limit would further reduce a significant health risk remaining after complying with the 8-hour TWA, full-shift exposure limit. OSHA also found that the lowest excursion level which is feasible both to measure and to achieve primarily through engineering and work practice controls is 1 f/cc measured over 30 minutes. For these reasons, in 1988, OSHA promulgated an asbestos excursion limit of 1 f/cc over a sampling period of 30 minutes (53 FR 35610).

b. *Minimum Detectable Level and Feasibility of Measuring Short-Term Excursions.*

As discussed in OSHA's 1986 asbestos final rule (51 FR 22686), the key factor in sampling precision is fiber loading. To determine whether the analytical method described in Appendix A of its asbestos standard could be used to analyze short-term samples, OSHA calculated the lowest reliable limit of quantification using the following formula:

$$C = [(f/[(n)(A_f)])(Ac)]/[(V)(1,000)]$$

where:

C is fiber concentration (in f/cc of air);

f is the total fiber count;

n is the number of microscope fields examined;

A_f is the field area (0.00785 mm^2) for a properly calibrated Walton-Beckett graticule;

Ac is the effective area of the filter (in mm^2); and

V is the sample volume (liters).

Table VII–1 was generated from the above equation. The table shows that 1.0 f/cc measured over 30 minutes can be reliably measured when pumps are used at the higher flow rates of 1.6 Lpm or more, using the 25-mm filters.

TABLE VII–1.—RELATIONSHIP OF SAMPLING METHOD TO MEASUREMENT OF ASBESTOS

Flow rate (Lpm)	Sampling time	Lowest level reliably measured (f/cc) using 25-mm filters
2.5	15 minutes	1.05
2.0		1.31
1.6		1.63
1.0		2.61
0.5		5.23
2.5	30 minutes	0.51
2.0		0.65
1.6		0.82
1.0		1.31
0.5		2.61

We recognize that in some situations, such as low background dust levels, ower exposures could be measured; however, the risk of overloading the filter with debris increases when using the higher flow rates. We can be confident that we are measuring the actual airborne concentrations of asbestos, within a standard sampling and analytical error (±25 percent), when we use the minimum loading suggested by the OSHA Reference Method (29 CFR 1910.1001, Appendix A). The excursion limit of 1.0 f/cc for 30 minutes is the lowest concentration that we can measure reliably for determining compliance with the excursion limit.

Some commenters supported MSHA's adoption of OSHA's asbestos excursion limit of 1.0 f/cc for 30-minutes. Many other commenters offered no objections, choosing to remain silent on this issue. We have considered the comments and are proposing an asbestos excursion limit of 1.0 f/cc over a minimum sampling time of 30 minutes.

C. §§ 56/57.5001(b)(3) and 71.702(c): Measurement of Airborne Fiber Concentrations

We currently require asbestos samples to be analyzed by PCM for the initial determination of exposure and compliance with the PELs. We are proposing to retain this requirement for PCM analysis. The proposed rule would require fiber concentration to be determined by PCM using a method statistically equivalent to the OSHA Reference Method in OSHA's asbestos standard (29 CFR 1910.1001, Appendix A).

The OIG recommended that we use TEM for the initial analysis of samples collected to evaluate a miner's personal exposure to asbestos. In our 2002 asbestos ANPRM, we requested information to help us determine the benefits and feasibility of changing our asbestos analytical method from PCM to TEM for evaluating a miner's exposure to asbestos. For the reasons discussed in this preamble, we cannot justify using a TEM analytical method for the initial determination of compliance with our asbestos PELs.

1. Brief Description and Comparison of Three Analytical Techniques

To ease understanding of the discussion that follows, this section briefly describes the three analytical techniques that MSHA has used for analyzing asbestos samples. All three techniques involve counting fibers. MSHA has used—

- *Phase contrast microscopy* (PCM) on air samples to determine a miner's exposure for comparison with our permissible exposure limits (PELs) for asbestos.
- *Transmission electron microscopy* (TEM) on the same air samples analyzed by PCM when we need to confirm the presence of asbestos and distinguish asbestos from other fibers in the sample.
- *Polarized light microscopy* (PLM) to analyze bulk samples collected from an area suspected of having asbestos in the ore or dust, not for air samples collected to determine a miner's exposure.

Table VII–2 below presents a brief summary of various features of these three analytical techniques. The values listed are approximate.

TABLE VII–2.—MSHA'S COMPARISON OF THREE ANALYTICAL TECHNIQUES [74] USED TO ANALYZE ASBESTOS SAMPLES

Criteria	PCM	TEM	PLM
Magnification	Up to 1,000X; typically 400–450X	Up to 1,000,000X; typically 10,000X.	Up to 1,000X; typically 10–45X.
Resolution	0.2 μm	0.001 μm [75]	0.2 μm.
Sample Area Examined	Minimum: 100 fibers & 20 fields; or 100 fields (0.157–0.785 mm^2).	100 fibers or 4.4 mm^2 minimum (0.06–0.4 mm^2)*.	Scan entire prepared sample (1 cm^2).
Additional information	None	Crystal structure & elemental composition.	Refractive index.
Microscope cost	$1,500–$2,000	$200,000–$300,000	$1,500–$2,000.
Analysis cost/filter	$10–$15	$100–$400	$10–$15.
Analysis time/filter	0.25–0.5 hour	3–4 hours or more	0.25–0.5 hour.

TABLE VII–2.—MSHA'S COMPARISON OF THREE ANALYTICAL TECHNIQUES[74] USED TO ANALYZE ASBESTOS SAMPLES—Continued

Criteria	PCM	TEM	PLM
Degree of expertise of analysts	Requires a moderate level of expertise; 40 hours training minimum.	Requires a high level of expertise and experience.	Requires a moderate level of expertise; 40 hours training minimum.

* NIOSH 7402 depends on loading: light–40 fields; medium–40 fields or 100 fibers; heavy–6 fields and 100 fibers.

2. Fiber Identification Using Transmission Electron Microscopy (TEM)

a. *Advantages and Disadvantages of TEM Analysis*

The transmission electron microscope (TEM), equipped with an energy dispersive x-ray spectrometer (EDS) and using selected area electron diffraction (SAED) is generally capable of identifying the mineralogy of individual asbestos fibers. Even so, TEM does not always have sufficient precision to make definitive distinctions between closely related minerals, such as between winchite [$(NaCa)Mg_4(Al,Fe^{3+})Si_8O_{22}(OH)_2$] and tremolite [$Ca_2Mg_5Si_8O_{22}(OH)_2$].[76] Because electron microscopes provide greater magnification and greater image clarity, including sharper three-dimensional images than light microscopes, TEM can detect fibers that are undetectable using PCM. Routine use of TEM analysis, however, would have some significant disadvantages.

- Epidemiological data correlating TEM asbestos exposure levels with asbestos-related diseases is not available for conducting a new risk assessment.
- TEM analysis is time consuming and expensive, requiring highly skilled personnel for instrument operation and data interpretation, especially when applied as the primary analytical method.
- Few facilities offer TEM analysis for asbestos air samples collected in a mining environment.

Another disadvantage of TEM is that it uses an even smaller amount of sample than is used in PLM or PCM analysis. Asbestos fibers may not be present in the small portion of sample examined under the electron microscope, even when it is present in the larger sample examined by PLM or PCM. Despite its disadvantages, TEM allows us to better identify asbestos minerals in air samples collected in a mine.

b. *Use of TEM to Determine Compliance with MSHA's PELs.*

The OIG recommended that MSHA use TEM for its initial analysis to determine if an asbestos sample is over the PEL. MSHA believes that analyzing an airborne dust sample from a mine, which might contain asbestos, requires additional expertise not readily developed through experience analyzing samples known to contain asbestos. We recognize that EPA routinely uses TEM for the analysis of air samples collected for asbestos abatement under the Asbestos Hazard Emergency Response Act (AHERA) and requires the use of TEM to characterize workers' asbestos exposures (40 CFR part 763). MSHA currently uses TEM on a limited basis, when necessary, to verify the presence of asbestos in samples. These samples often contain few fibers among much dust and a variety of other interferences.

In the ANPRM, we requested comments on the use of TEM including cost, availability, comparisons of PCM to TEM, and a possible relationship of TEM to a PEL. In response to the ANPRM, some commenters suggested that MSHA use TEM to augment PCM measurements. Overall, industry commenters did not recommend the use of TEM for the initial analysis of fiber samples for comparison to the PELs. Commenters did not dispute additional, confirmatory analysis of samples that show possible exposure to asbestos in excess of the PELs. NIOSH also did not believe that TEM should be used for routine monitoring even though they consider TEM a valuable tool in mineral identification. NIOSH comments stated the reasons for not using TEM as the primary method for determining compliance with the PELs as (i) the lack of health risk data associated with TEM, (ii) the level of expertise required, and (iii) the high cost.

(i) *Lack of Health Risk Data Based on TEM.*

OSHA did not use analytical results based on TEM in its original risk assessment for asbestos. Although attempts have been made,[77] researchers have not reported a strong, consistent correlation between PCM and TEM analyses. The relationships that are reported are specific to the fiber type and environment sampled.[78] To set a meaningful permissible exposure limit based on TEM analysis, we must have either—

- Peer-reviewed epidemiology or toxicology studies relating TEM analysis and adverse health effects, or
- A predictive relationship correlating TEM and PCM for samples collected in a mining environment.

(ii) *Level of Expertise.*

One commenter representing an industry association at MSHA's public hearing in Charlottesville, Virginia (2002) testified that TEM was not a method for routine monitoring. This commenter also pointed out—

> * * *that very few commercial TEM labs are competent to perform valid analyses of the complicated mineralogical mixtures that you find in mining and quarrying operations.

Another commenter at the Charlottesville public hearing testified that TEM is fallible. This commenter said that electron diffraction patterns for structurally similar minerals can be difficult to distinguish from one another. Each particle in the sample may be of a different composition and the analyst cannot assume that every particle with the same shape is the same mineral.

(iii) *High Cost of TEM Analysis.*

Several commenters representing an industry association each commented on the high cost of TEM analysis. One commenter stated that, because the variability of the measurement increases at the lower concentrations, when the PEL is lowered it is important to increase the frequency of monitoring and, therefore, the cost of sample analysis becomes an issue.

3. Phase Contrast Microscopy (PCM) for the Analysis of Personal Exposure Samples

The use of PCM for quantitative analysis of samples does not differentiate between mineral species. There is industry concern that misidentification of fibers as asbestos can lead to incorrect conclusions, resulting in unnecessary expenses for mining companies. PCM counting schemes address the key problem of

[74] MSHA's summary of its literature reviews and experience.

[75] Clark, p. 5, 1977.

[76] Leake *et al.*, 1997.

[77] Snyder *et al.*, 1987.

[78] Verma and Clark, 1995.

needing to make a relatively fast, cost-effective evaluation of a situation in a mine so as to protect miners from danger to their health. PCM maintains the integrity, meaning, and usefulness of the analytical method for evaluating samples relative to the historic health data.[79]

a. *Discussion of Microscope Properties.*

One issue commenters mentioned repeatedly concerning PCM is the limited resolution and magnification of light microscopes compared to electron microscopes.

(i) *Resolution.*

The resolution of the microscope is the smallest separation between two objects that will allow them to be distinctly visible. The higher the resolving power of a microscope, the smaller the distance can be between two particles and have them still appear as two distinct particles. Resolution is about 0.22 μm using PCM and 0.00025 μm using TEM. This means that where the analyst sees a single fiber using PCM, that same analyst might see a number of thinner fibers using TEM.

(ii) *Magnification.*

The level of magnification is another PCM microscopy issue. Magnification is the ratio of the size that the object appears under the microscope to its actual size. PCM analytical methods specify a magnification of 400 to 450 times (×) the object's actual size. The magnification using TEM can be 10,000X to 1,000,000X. This means that the analyst sees a smaller amount of the sample using TEM than when using PCM.

b. *Health Risk Data Based on PCM.*

Historically, asbestos samples have been analyzed by mass (weighing), counting (microscopy), or a qualitative property (spectroscopy). When recommending an exposure standard for chrysotile asbestos, the British Occupational Hygiene Society contended [80] that the microscopic counting of particles greater than 5 μm in length would show a relationship with the prevalence of asbestosis similar to those based on the mass of respirable asbestos. Many scientific papers have suggested that counting only fibers longer than 5 μm would minimize variations between microscopic techniques [81] and improve the precision of the results.[82] Nonetheless, this criterion was accepted as an index of exposure, even though some believed that, due to their possible health effects, the smaller fibers should not be excluded.[83]

In recommending an asbestos standard in 1972, NIOSH suggested using the same size criteria that the British adopted. They also recommended reevaluating these criteria when more definitive information on the biologic response and precise epidemiologic data were developed. When exposure data were not obtained using PCM, NIOSH applied a conversion factor to the non-PCM data to estimate PCM concentrations for use as the basis of a recommended permissible occupational exposure level.

A number of commenters testified (Charlottesville, 2002) that PCM methodology includes more than asbestos when determining fiber concentration in air. The commenters suggested that the lower risk seen in epidemiological studies relating PCM to adverse health outcomes in miners was possibly due to the background material inherent in air samples taken in a mining environment. They speculated that the background material had been counted and included in the estimated asbestos concentrations. This may have overestimated exposures and resulted in a dilution of the dose-response relationship presented in scientific publications.

c. *Subjectivity and Consistency of Counting Asbestos Fibers*

The fiber count obtained using the PCM method is dependent on several factors. These factors include the analyst's interpretation of the counting rules, the analyst's visual acuity, the optical performance of the microscope, and the optical properties of the prepared sample.[84] Much of the variability is attributed to the ability of the analyst to observe and size fibers.

The American Industrial Hygiene Association (AIHA) Proficiency Analytical Testing Program (PAT), operated in cooperation with NIOSH, maintains a database for historical data relating to asbestos fiber counting using PCM. This program, begun in 1972, provides statistical evaluation of laboratory performance on test samples. At its inception in 1968, the method used by laboratories participating in this program was the U.S. Public Health Service method (USPHS 68).[85] The counting rules for this method were vague and required little microscope standardization.

Work has been done to modify the PCM method to address these consistency issues.[86] Commenters to our asbestos ANPRM suggested that we consider thoracic sampling to minimize interference from large particles. Testimony at MSHA's public hearing in Charlottesville (2002) presented a counting technique based on the typical characteristics of asbestos in air. Another commenter stated that several approaches have been tried to remove non-asbestos minerals from samples, such as low temperature ashing or dissolution, but they would not be useful for mining samples. Another commenter suggested using a higher aspect ratio to increase the probability that the structures counted are fibers. Several commenters suggested the development of a new analytical method.

Overall, commenters recognized that it takes far less time to develop expertise in counting fibers using PCM than in developing expertise using TEM. NIOSH has developed a 40-hour training course for teaching analysts to count asbestos fibers.

The availability of analyst training courses, and the formation of accreditation bodies requiring laboratory quality assurance programs, helps minimize the variations in measurements between and within laboratories. Accreditation bodies require laboratories to use standardized analytical methods. AIHA also has the Asbestos Analyst Registry that specifies criteria for competence, education, and performance for analysts. In addition to these programs, our incorporation of OSHA's Appendix A would help minimize the subjectivity and increase consistency of measuring airborne asbestos concentrations by specifying core elements of acceptable analytical PCM methods.

4. MSHA's Incorporation of OSHA's Appendix A

Commenters generally supported the use of PCM for the initial analysis of fiber samples for determining compliance with the PELs. Commenters' major concerns focused on fiber counting procedures. Commenters suggested that differential counting techniques be developed to analyze air samples for asbestos using PCM and taking into consideration the fiber morphology and the distributions or populations of distinct fiber groups with characteristic dimensions. Other commenters stated that particle characteristics could not reliably be used to differentiate fibers from cleavage fragments when examining relatively small numbers of fibers.

[79] Wylie *et al.*, 1985.

[80] Lane *et al.*, 1968.

[81] ACGIH–AIHA, 1975.

[82] Wylie, 2000.

[83] ACGIH–AIHA, 1975; NIOSH, 1972.

[84] Rooker *et al.*, 1982.

[85] Schlecht and Shulman, 1995.

[86] Pang, 2000; Harper and Bartolucci, 2003.

In this rulemaking, we propose to continue to use PCM to determine asbestos concentrations. PCM was used in the development of past exposure assessments and risk estimates and is relatively quick and cost-effective. Thus, with respect to analytical methods, this proposed rule is not substantively different than our existing standards. We also have added language to allow for our acceptance of other asbestos analytical methods that are at least as effective in identifying potential overexposures.

The OSHA Reference Method, mandatory Appendix A to the OSHA asbestos standard (29 CFR 1910.1001), specifies the elements of an acceptable analytical method for asbestos and the quality control procedures that laboratories performing the analysis must implement. Paragraph (d)(6)(iii) of OSHA's asbestos standard (29 CFR 1910.1001) requires employers, who must monitor for asbestos exposure, to use a method for collecting and analyzing samples that is equivalent to the OSHA Reference Method (ORM), and also describes the criteria for equivalency. For the purpose of this proposed rule, MSHA would consider a method equivalent if it meets the following criteria:

[from 29 CFR 1910.1001(d)(6)(iii)]

(A) Replicate exposure data used to establish equivalency are collected in side-by-side field and laboratory comparisons; and

(B) The comparison indicates that 90% of the samples collected in the range 0.5 to 2.0 times the permissible limit have an accuracy range of plus or minus 25 percent of the ORM results at a 95% confidence level as demonstrated by a statistically valid protocol; and

(C) The equivalent method is documented and the results of the comparison testing are maintained.

Appendix A of OSHA's asbestos standard lists NIOSH 7400 and OSHA ID–160 as examples of analytical methods that meet these criteria. In addition, there are other PCM analytical methods for asbestos:

- The Asbestos International Association (AIA), AIA RTM1, ''Airborne Asbestos Fiber Concentrations at Workplaces by Light Microscopy (Membrane Filter Method).''
- The International Organization for Standardization (ISO), ISO 8672:1993(E), ''Air quality—Determination of the number concentration of airborne inorganic fibres by phase contrast microscopy—Membrane filter method.''

MSHA recognizes that there are advantages and disadvantages of various PCM analytical methods, especially as they relate to the processing of samples collected in a mining environment. For example, the ASTM dilution method (D 5755–95) for overloaded samples has allowed laboratories to recover useable results from airborne exposure samples that, in the past, had been invalidated. We note that both ASTM and the National Stone Sand and Gravel Association are pursuing the development of an analytical method for asbestos in mining samples. We would consider analytical methods that afford a better measurement alternative as they become available. We believe that allowing statistically equivalent analytical methods would remove barriers to innovation and technological advancement.

We specifically request information on additional criteria for equivalency for use in evaluating alternative analytical methods for the determination of asbestos in air samples collected in a mining environment. We also request information about analytical methods for which equivalency has already been demonstrated.

5. MSHA Asbestos Control Program

In the ANPRM, we asked whether or not our current sampling methods met the needs of the mining community and how mineral dust interferences could be removed from mining samples. The ANPRM also asked for comments on other ways to reduce miners' exposures, such as increased awareness of potential asbestos hazards at the mine site and the provision of adequate protection. We also asked for suggestions on what educational and technical assistance MSHA could provide and what other factors, circumstances, or measures we should consider when engineering controls are unable to reduce asbestos exposure below the PEL.

We received some criticism concerning our sampling and analysis procedures from a few commenters who believed that we should develop specific test procedures for the sampling and analysis of bulk samples for the mining environment, as well as specific air sampling procedures (including pump flow rates, cassette types, and filter matrix). They also believed that we should improve our reports by including inspection field notes, location, purpose, and procedure followed, as well as descriptions of the accuracy, meaning, and limitations of the results. In its comments to the ANPRM, one trade association recommended that we maintain our current, established asbestos monitoring protocols with emphasis on full-shift monitoring for comparison to the PEL. Another trade association stated that our current field sampling methods are adequate for most mines and quarries, particularly when no significant amount of asbestos is found. They also suggested that respirable dust sampling using a cyclone might be a means to remove interfering dust from the sample. NIOSH suggested that we could use thoracic samplers, but that studies performed on their use did not include mines and further positive test results would be needed before they could promote their use in mining.

We believe that our current sampling procedures are adequate and we are proposing to continue using them. Our current procedures, which we updated in 2000, specify using several, typically three, 25-mm filter-cassettes in series to collect a full-shift sample. Depending on the amount of visible dust in the air, these procedures allow the setting of pump flow rates to optimize fiber loading and minimize or eliminate mixed dust overload. We are not considering the use of a cyclone to capture respirable dust because research indicates that larger durable fibers also could cause adverse health effects.

6. Bulk Sample Analysis Using Polarized Light Microscopy (PLM)

In the ANPRM, we asked what method was most appropriate for MSHA to use to analyze bulk samples for asbestos in the mining industry. The presence of asbestos in a bulk sample does not mean that it poses a hazard. The asbestos must become airborne and be respirable, or contaminate food or water, to pose a health hazard to miners. The detection of asbestos in a bulk sample serves to alert mine operators, miners, and MSHA to the possible presence of asbestos. One mining association stated that air monitoring is not the preferred scheme to screen for possible asbestos exposure. They believe, and we agree, that knowledge of the geology of asbestos and identification of asbestos in bulk samples may be a useful step in determining whether asbestos is present in the ore or host rock.

We are not proposing to use bulk samples to determine asbestos exposures in mining. We are requesting comments on whether MSHA's use of routine, periodic bulk sampling would be useful in determining whether or not we should take personal exposure air samples to evaluate miners' exposures to asbestos at mines suspected of having naturally occurring asbestos.

MSHA also uses the detection of asbestos in bulk samples as a trigger for its compliance assistance activities. We have trained MSHA inspectors on ways to identify asbestos in the ore and

surrounding rock formations at mines and to pass this information on to mine operators. Analysis of samples of accumulated settled dust from a mill or construction debris can identify areas or activities that would require special precautions. After considering the results of the bulk sample analysis, together with its strengths and weaknesses, the mine operator, miners, and MSHA can take appropriate action to reduce the risk of exposure, which would help reduce the risk of asbestos-related diseases among miners.

Analysis of bulk samples is usually performed using PLM. Commenters to the ANPRM expressed concern that the PLM analysis may not detect asbestos when it is present. A particle must be at least 0.5 μm in diameter to refract light and many asbestos fibers are too thin to refract light. Asbestos may be a small percentage of the parent material or not uniformly dispersed in the sample and, therefore, may not be seen in the small portion of sample that is examined under the microscope. In addition, the method could detect asbestos erroneously because a nonasbestiform mineral could have a refractive index similar to one of the asbestos minerals. Another problem with identifying asbestos using PLM is that all varieties of a mineral show the same refractive index. For example, even an experienced analyst might not differentiate between the asbestiform and nonasbestiform varieties of a mineral based on their refractive indices.

Although a trained individual may be able to identify bulk asbestos by its appearance and physical properties, the identification can be more difficult when the asbestos is dispersed in a dust sample or is present in low concentration in a rock. A commenter at MSHA's hearing in Charlottesville (2002) testified that none of the existing methods for bulk sample analysis (EPA, NIOSH, ASTM) were designed for complex mine environments.

D. Discussion of Asbestos Take-Home Contamination

This proposed rule does not include standards to address asbestos take-home contamination. We recognize the important role of take-home exposures in contributing to asbestos disease of workers and their family members. We believe that a combination of enforcement and compliance assistance activities, together with increased education and training of mine inspectors, mine operators, and miners, coupled with the lowering of the PELs, would be effective in preventing asbestos take-home contamination. Mine operators are encouraged to measure the potential for take-home contamination and provide protective measures where necessary to minimize secondary take-home exposures.

1. MSHA's Request for Information

MSHA's ANPRM for measuring and controlling asbestos exposures at mines included requests for information and data to help us evaluate what we could do to eliminate or minimize take-home contamination. We asked how and/or should MSHA be addressing take-home contamination. We also asked about provisions for the special needs of small mine operators and what assistance (*e.g.*, step-by-step instructions, model programs, certification of private programs) we could provide. We also requested information on the types of protective clothing miners currently use when working in areas where asbestos may be present, and the types of preventive measures currently in use when miners leave the area, to prevent the spread of asbestos exposure.

2. Commenters' Responses to the Take-Home Contamination Issue in MSHA's Asbestos ANPRM

Commenters expressed concern that we would apply the requirements in OSHA's and EPA's standards to trace levels of fibrous mineral exposures at mines, pits, and quarries. Many industry commenters urged MSHA to limit protective measures for take-home contamination to those activities involving known asbestos and asbestos-containing products, such as those regulated by OSHA and EPA. For example, commenters suggested that MSHA adopt appropriate provisions from the OSHA asbestos standard for construction workers, for asbestos abatement workers, and for those miners whose exposures exceed MSHA's PEL.

Commenters cautioned MSHA to be mindful of the definitions of asbestos when analyzing samples to determine compliance. They also urged MSHA to acknowledge the presence of interferences in mining samples, as well as the differences between nonasbestiform amphiboles and their asbestos analogues. Some commenters cautioned that, unless MSHA constructed the provisions for reducing take-home contamination carefully, the consequences for the mining industry might be costly with little or no benefit to miners.

NIOSH encouraged MSHA to adopt measures included in its 1995 Report to Congress on their *Workers' Home Contamination Study Conducted under the Workers' Family Protection Act*. Labor participants also supported protective measures, such as personal protective equipment and showers before leaving work, to prevent take-home contamination.

3. MSHA's Considerations in Making Its Decision To Use Non-Regulatory Methods To Address the Hazard From Take-Home Contamination

In determining an appropriate proposed action for preventing take-home contamination, we considered the comments to the ANPRM, OSHA's and EPA's requirements, and the recommendations of NIOSH and the OIG. We based our determination to propose to address asbestos take-home contamination through non-regulatory measures on the following factors:

- Existing standards requiring engineering controls for airborne contaminants, respiratory protection, personal protective clothing, hazard communication, and housekeeping, together with a lower PEL, would provide sufficient enforcement authority to assure that mine operators take adequate measures when necessary to prevent asbestos take-home contamination.

- There are no asbestos mines or mills currently operating in this country and different ore bodies of the same commodity, such as vermiculite mining, are not consistent in the presence, amount, or dispersion of asbestiform minerals. Currently, asbestos exposures in mining are low. As discussed in section V.D.2 of this preamble, only two of the 123 mines sampled for asbestos in the ore show personal asbestos exposures exceeding 0.1 f/cc. This is less than 2 percent of the sampled mines.

- Some mines with asbestos minerals in the ore or host rock have implemented protective measures voluntarily. MSHA experience in the recent past indicates that mine operators and mining companies are increasingly aware of asbestos hazards and have been willing to cooperate with MSHA to eliminate this hazard.

- The measures taken to prevent take-home contamination are varied, and mine operators would have the freedom to eliminate this hazard in a manner based on site-specific exposure measurements and the nature of the asbestos exposures at the mine. For example, mine operators could minimize or prevent asbestos take-home contamination by providing disposable coveralls or on-site shower facilities coupled with clothing changes.

4. MSHA's Activities for Eliminating the Risk of Asbestos Take-Home Contamination

We believe that mine operators and miners would take action to eliminate any possible recurrence of a disaster, such as that in Libby, Montana, if they understand the hazards and ways to minimize the risk. To that end, we are placing special emphasis on the potential hazard from asbestos take-home contamination in our enforcement, compliance assistance, and educational activities as follows.

a. Enforcement Activities.

- Enforce the new, lower PELs when they become effective.
- Continue enforcement of standards applicable to providing special protective equipment and clothing whenever environmental hazards are encountered in a manner capable of causing injury or impairment, *e.g.*, § 56.15006.
- Ensure that mine operators provide miners, who are at risk of being exposed, with information about the signs, symptoms, and risk for developing asbestos-related illness as required by the hazard communication standard.

b. Compliance Assistance.

- Continue to monitor targeted mines for the presence of asbestos.
- Encourage mine operators to comply with OSHA's asbestos standard, or hire professionals skilled and certified in working with asbestos, when they engage in construction, demolition, or renovation activities at the mine.
- Issue an updated *Program Information Bulletin (PIB)* on asbestos to include a greater emphasis on protective measures to reduce take-home contamination. We expect distribution this year.

c. *Educational Activities.*

- Continue outreach to mine operators through training courses, informational materials, and topical local meetings.
- Issue an updated *Health Hazard Information Card* for miners this year to increase miners' awareness of the hazards of take-home contamination from asbestos or other asbestiform minerals and to suggest measures that the miners can take to prevent it.
- Continue specialized asbestos hazard and sampling training for mine inspectors.

E. Section 71.701(c) and (d): Sampling; General Requirements [Controlling Asbestos Exposures in Coal Mines]

For surface coal mines and surface worksites at underground coal mines, we are proposing to add a reference to § 71.702 (the asbestos standard for coal mines) in paragraphs (c) and (d) of § 71.701, which contain the requirements for controls and sampling. The existing language in § 71.701(c) and (d) references the Threshold Limit Values (TLVs®) and excursion limits in § 71.700, but not the asbestos exposure limits in § 71.702. MSHA regulations currently require mine operators to control miners' exposures to airborne contaminants and to sample for airborne contaminants, as necessary, to determine when and where such controls may be needed. In developing this proposed rule, we determined that § 71.701 was unclear as to its applicability to asbestos exposures. This proposed rule would clarify our intent that coal mine operators control miners' exposures to asbestos.

VIII. Regulatory Analyses

A. Executive Order (E.O.) 12866

In our ANPRM on asbestos exposure, we specifically requested information, data, and comments on the costs and benefits of an asbestos rule, including what engineering controls and personal protective equipment are being used to protect miners from exposure to asbestos and to prevent take-home contamination. Considering the public comments, and MSHA data and experience, we assessed both the costs and benefits of this proposed rule in accordance with Executive Order 12866. The following sections summarize the analysis of benefits and costs presented in the Preliminary Regulatory Economic Analysis (PREA) for this proposed rule. The PREA contains a full disclosure of our methodology and the basis for our estimates.

1. Discussion of Benefits

The benefits of a rulemaking addressing measurement and control of asbestos would be the reduction or elimination of diseases arising from exposure to asbestos. Exposure to airborne asbestos can cause the development of lung cancer, mesothelioma, gastrointestinal cancer, and asbestosis. Other associated adverse health effects include cancers of the larynx, pharynx, and kidneys. A person with an asbestos-related disease suffers material impairment of health or functional capacity.

a. *Summary of Benefits.*

We estimate that between 1 and 19 deaths could be avoided during the next 65 years by lowering the 8-hour TWA, full-shift exposure limit from 2.0 f/cc to 0.1 f/cc. This equates to a reduction of between 9 and 84 percent of occupationally related deaths caused by asbestos exposures. Additional deaths would be avoided by decreasing miners' exposures to short-term bursts of airborne asbestos undetectable by the proposed 8-hour TWA, full-shift exposure limit. We estimate that lowering the excursion limit from 10 f/cc over 15 minutes to 1 f/cc over 30 minutes would reduce the risk of death from lung cancer, mesothelioma, or gastrointestinal cancer by 1 additional avoidable death for every 1,000 miners exposed to asbestos at the proposed PELs.

We are aware that lowering our PELs would not completely eliminate the risk of asbestos-related material impairment of health or functional capacity. We expect some additional risk reduction from mine operators' management directives to avoid disturbing asbestos on mine property.

b. *Calculation of Deaths Avoided.*

The benefits resulting from the lowered PELs depend on several factors including—

- Existing and projected exposure levels,
- Age of the miner at first exposure,
- Number of workers exposed, and
- Risk associated with each exposure level.

We estimate the number of miners currently exposed and their level of exposure from personal exposure information gathered during our inspections between January 2000 and December 2003. These data are available on our Web site at *http://www.msha.gov.* Section V of this preamble contains the characterization and assessment of exposures in mining.

Laboratory results indicate that exposure concentrations are unevenly distributed across mines and miners. We use four fiber concentration levels to estimate the risk to miners. The break points for these exposure levels are the proposed and existing exposure limits. Observations show that 90 percent of the sampling results are below 0.1 f/cc.

To estimate the expected number of asbestos-related deaths, we applied OSHA's linear, no-threshold, dose-response risk assessment model to our existing and proposed PELs. The upper exposure limit is 10 f/cc because the range of information derived from the epidemiological studies used to determine the dose-response relationship in OSHA's quantitative risk assessment does not include higher levels. The expected reduction of deaths resulting from lowering the PELs would

be the differences between the expected deaths at each exposure level.[87]

OSHA estimated cancer mortality for workers exposed to asbestos and published these data in their 1986 final rule (51 FR 22644). We discuss OSHA's asbestos risk assessment in section VI of this preamble and have reproduced OSHA's mortality data in Table VI–4.

c. Benefit of the Proposed 0.1 f/cc 8-hour TWA, Full-Shift Exposure Limit.

The current deaths from lung cancer, mesotheliomas, gastrointestinal cancer, and asbestosis are the result of past exposures to much higher air concentrations of asbestos than those found in mines today. The risks of these diseases still exist, however, and these risks are significant for miners exposed to lower air concentrations of asbestos. Most diseases resulting from a current asbestos exposure may not become evident for another 20 to 30 years. Most likely, the full benefits will occur over a 65-year period following implementation of the lower PELs. The rate at which the incidence of the cancers decreases depends on several factors including—

- Latency of onset of cancer,
- Attrition of the mining workforce,
- Changing rates of competing causes of death,
- Dynamics of other risk factors,
- Changes in life expectancy, and
- Advances in cancer treatments.

It is not possible to quantify accurately the complete dynamics of this process.

Supplemental examination of MSHA's personal exposure samples using TEM analysis indicates that not all fibers counted by PCM are the currently regulated asbestos minerals. This is especially true for operations mining and processing wollastonite. We distinguish between different mineralogical fibers using TEM and combine this supplemental information with PCM information to calculate our lower estimate of benefits.

We estimate that there would be from 0.5 to 13.1 lung cancer deaths avoided, 0.2 to 4.4 mesothelioma deaths avoided, and 0.1 to 1.3 gastrointestinal cancer deaths avoided. The total number of cancer deaths avoided by this rule would be the sum of cancer deaths avoided at all the mines included in the exposure data, that is, the mines we have sampled. Based on the best available information, we expect a reduction of between 1 and 19 deaths avoided due to lowering the 8-hour TWA PEL to 0.1 f/cc.

d. *Benefits of the Proposed 1.0 f/cc Excursion Limit.*

We are proposing an asbestos excursion limit of 1.0 f/cc as measured over a 30-minute period for metal and nonmetal miners and coal miners working at surface work areas. We intend that the excursion limit protect miners from the adverse health risks associated with brief fiber-releasing episodes. We anticipate that some mining operations will be subject to brief fiber-releasing episodes even after lowering airborne asbestos concentrations to the 8-hour TWA, full-shift exposure limit. We have insufficient data, however, to obtain a meaningful estimate of the frequency of these episodes, the actual exposure concentrations, or the numbers of miners exposed. Miners may encounter brief fiber-releasing episodes from exposure to commercial asbestos in asbestos-containing building materials (ACBM) or as settled dust containing asbestos; while working on equipment that may have asbestos-containing parts; and while drilling, dozing, blasting, or roof bolting in areas of naturally occurring asbestos.

Because we have little information from short-term exposure measurements, we estimate the benefit of an excursion limit from the difference in concentration between the 8-hour TWA, full-shift exposure limit (0.1 f/cc) and the excursion limit averaged over the full shift [(1 f/cc)/(16 30-minute periods) = 0.063 f/cc]. The lifetime risk associated with an exposure to 0.1 f/cc from either of the three types of cancer is 0.00336, if first exposed at age 25 and exposure continues every work day at that level for a duration of 45 years. The risk associated with exposure to 0.063 f/cc using the same age and duration of exposure is 0.00212. The difference in lifetime risk is 0.00124. This risk equates to 1.24 additional deaths avoided for every 1,000 miners exposed to asbestos at a concentration afforded by the proposed excursion limit.

e. *Further Consideration of Benefits.*

We believe that the pressure of public scrutiny and government intervention has prompted mine operators to take precautionary measures to limit miners' exposures to asbestos. If public pressures were to subside, and we did not have a regulation limiting exposures to 0.1 f/cc over an 8-hour shift, we would not have a means to enforce the same level of protection provided in other industries.

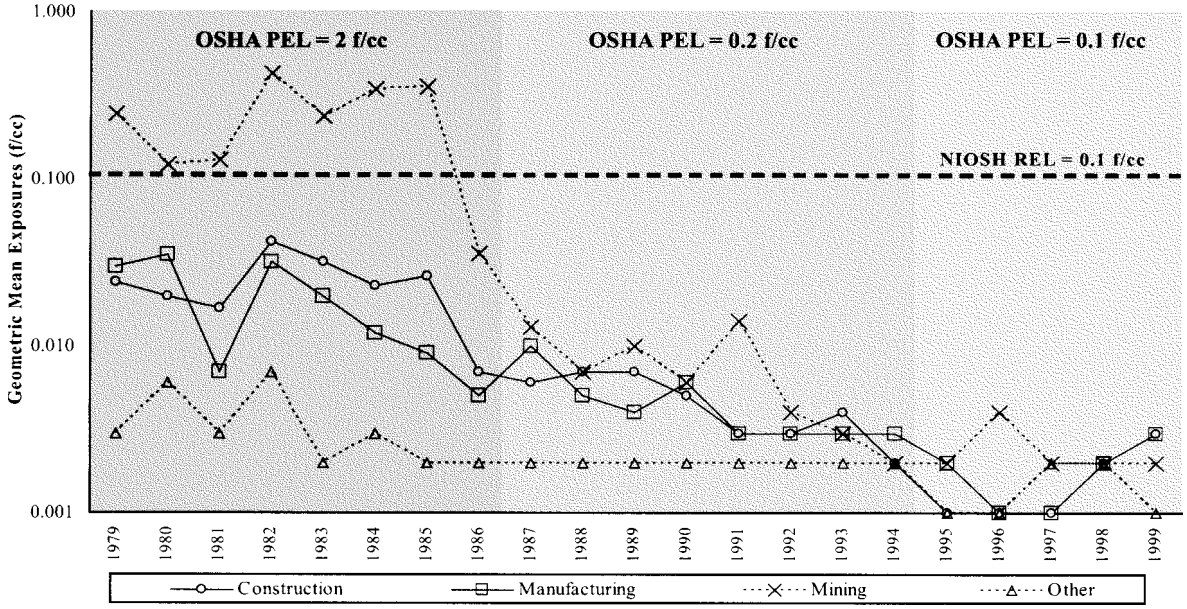
Enforcement of the lower PELs together with the direct support from the federal government in education, identification, and elimination of the asbestos hazard would increase awareness and attention to the presence of asbestos on mine property. These activities also would help focus efforts on preventing exposures, thus providing miners with added health benefits. As seen in Chart VIII–1, mining operations with ore containing naturally occurring asbestos seem to have reduced miners' exposures, perhaps due to their awareness of the lower exposure limits OSHA promulgated in 1986.[88]

[87] Nicholson, 1983; JRB Associates, 1983; OSHA (51 FR 22612), 1986; OSHA (53 FR 35609), 1988; OSHA (59 FR 40964), 1994.

[88] NIOSH WoRLD pp. 16–17 and 19–23, 2003.

[89] NIOSH WoRLD, 2003.

Chart VIII-1: Industry Trends of Airborne Asbestos Concentrations.[89]



The estimates of the cancer deaths avoided by reducing the PELs understate the total amount of benefit gained from this rule. These benefits do not include the reduced incidence of asbestosis-related disabilities. Asbestosis cases often lead to tremendous societal costs in terms of health care utilization, loss of worker productivity, and a decrease in the quality of life of the affected individual. Similarly, MSHA's analysis does not quantify benefits among groups incidentally exposed, such as miners' family members. We note that several published articles document and discuss the health effects resulting from exposure to asbestos incident to living with a miner.[90]

This analysis overstates health benefits to the extent that we do not account for differential risks posed by different types of fibers as identified by PCM, and differences in the cancer mortality risk for asbestos-exposed workers who smoke and those who do not.

2. Discussion of Costs

The proposed rule would result in total yearly costs of about $136,100. The cost would be about $91,500 per year for metal and nonmetal mines and about $44,600 per year for coal mines. These costs represent less than 0.001 percent of the yearly revenues of $38.0 billion for the metal and nonmetal mining industry and $10.1 billion for the surface coal mining industry.

Table VIII–1 presents our estimate of the total yearly compliance costs by compliance strategy and mine size. The total costs reported are projected costs, in 2002 dollars, based on our knowledge, experience, and available information.

TABLE VIII–1.—SUMMARY OF YEARLY COMPLIANCE COSTS

Metal and nonmetal mine size	Compliance strategy				Total for metal and nonmetal mines
	Selective mining	Wet methods	Mill ventilation	Removal of introduced asbetos	
Small (<20)	$1,058	$1,235	$747	$1,750	$4,790
Large (20–500)	4,922	8,614	12,916	21,000	47,452
Large (>500)	1,641	2,871	19,001	15,750	39,264
Total	7,622	12,721	32,664	38,500	91,506
Coal mine size	**Compliance strategy**				**Total for coal mines**
	Selective mining	Wet methods	Mill ventilation	Removal of introduced asbetos	
Small (<20)				$875	$875
Large (20–500)				12,250	12,250
Large (>500)				31,500	31,500

[90] NIOSH Publication No. 2002–113, May 2002.

Coal mine size	Compliance strategy				Total for coal mines
	Selective mining	Wet methods	Mill ventilation	Removal of introduced asbetos	
Total				44,625	44,625

B. Feasibility

MSHA has concluded that the requirements of this proposed rule would be both technologically and economically feasible. This proposed rule is not a technology-forcing standard and does not involve activities on the frontiers of scientific knowledge. All devices that would be required by the proposed rule are already available in the marketplace and have been used in either the United States or the international mining community. We have concluded, therefore, that this proposed rule is technologically feasible.

As previously estimated, the mining industry would incur costs of about $136,100 yearly to comply with this proposed rule. These compliance costs represent well less than 0.001 percent of the yearly revenues of the mines covered by this rule, thus providing convincing evidence that the proposed rule is economically feasible.

C. Alternatives Considered

In our discussion of PELs in section VII.B of this preamble, we recognize that there is a remaining residual risk of adverse health effects for miners exposed at the proposed asbestos 8-hour TWA PEL. We considered proposing a lower PEL as a regulatory alternative to further reduce the risk of adverse health effects from a working lifetime of exposure. Assuming 0.05 f/cc, for example, and interpolating the data from OSHA's risk assessment summarized in Table VI–4 of this preamble, there would be about 1.68 cancer deaths per 1,000 miners exposed to asbestos at 0.05 f/cc for 45 years. The 1.68 cancer mortality rate is 50 percent less than the rate of 3.36 cancer deaths per 1,000 exposed miners calculated for the proposed 0.1 f/cc PEL; and about 97 percent less than we estimate for our existing standard (64.12 cancer deaths per 1,000 exposed miners). We also project that reducing miner's exposure to an 8-hour TWA of 0.05 f/cc would reduce the expected cases of asbestosis to about 50 percent less than at the proposed 8-hour TWA PEL.

About 85 percent of the 123 sampled mines are already well in compliance with the 0.1 f/cc proposed PEL. We believe that, theoretically, almost all of the mining industry could be in compliance with a lower alternative PEL (0.05 f/cc 8-hour TWA). However, we cannot enforce an 8-hour TWA limit below 0.1 f/cc. The diversity of airborne particles prevalent in mining environments can interfere with sample analysis. Our existing standardized sampling techniques minimize interferences, but also impose limitations of accuracy below concentrations of 0.1 f/cc. We address these limitations in more detail in Chapter III of the PREA that accompanies this proposed rule. These accuracy issues make it infeasible for us to enforce a concentration lower than 0.1 f/cc airborne asbestos.

Although TEM provides greater characterization of asbestos fibers than PCM methodology, there is no predictable relationship between PCM and TEM measures of exposure using either method alone. We do not know of a risk assessment correlating TEM measures of exposure with adverse health effects. TEM measurements, therefore, cannot be used as the basis for an occupational exposure limit at this time. Additionally, TEM is much more expensive and time consuming than PCM. If we were to analyze each of the 2,184 personal exposure filters (collected by us to determine full-shift asbestos exposures from 2000 through 2003) using TEM, rather than PCM, it would cost us about $186,000 to $852,000 more. The mine operator's costs would increase in so far as the operator would do comparable sampling. We expect the operator to sample to determine whether control measures are needed, what controls might be needed, and the effectiveness of controls when implemented. A number of commenters supported our continued use of PCM for the initial analysis of asbestos samples.

We conclude that it is not feasible to regulate the mining industry below the proposed limit at this time. We welcome comments on the exposure limit proposed and the rationale used for choosing it over the alternative discussed above.

D. Regulatory Flexibility Analysis (RFA) and Small Business Regulatory Enforcement Fairness Act (SBREFA)

Based on our data, our experience, and information submitted to the record, we determined, and here certify, that this proposed rule would not have a significant economic impact on a substantial number of small entities. The PREA for this proposed rule (RIN: 1219–AB24), *Measuring and Controlling Asbestos Exposure,* contains the factual basis for this certification as well as complete details about data, equations, and methods used to calculate the costs and quantified benefits. We have placed the PREA in the rulemaking docket and posted it on MSHA's Web site at *http://www.msha.gov.*

E. Other Regulatory Considerations

1. The National Environmental Policy Act of 1969 (NEPA)

We have reviewed this proposed rule in accordance with the requirements of NEPA (42 U.S.C. 4321 *et seq.*), the regulations of the Council on Environmental Quality (40 CFR 1500), and the Department of Labor's NEPA procedures (29 CFR 11) and have assessed its environmental impacts. We found that this proposed rule would have no significant impact on air, water, or soil quality; plant or animal life; the use of land; or other aspects of the human environment.

2. Paperwork Reduction Act of 1995

This proposed rule contains no information collection or recordkeeping requirements. Thus, there are no additional paperwork burden hours and related costs associated with the proposed rule. Accordingly, the Paperwork Reduction Act requires no further agency action or analysis.

3. The Unfunded Mandates Reform Act of 1995

This proposed rule does not include any Federal mandate that may result in increased expenditures by State, local, or tribal governments; nor would it significantly or uniquely affect small governments. It would not increase private sector expenditures by more than $100 million annually. Accordingly, the Unfunded Mandates Reform Act requires no further agency action or analysis.

4. Treasury and General Government Appropriations Act of 1999, (Section 654: Assessment of Impact of Federal Regulations and Policies on Families)

This proposed rule would have no affect on family well-being or stability, marital commitment, parental rights or authority, or income or poverty of families and children. Accordingly, the Treasury and General Government Appropriations Act requires no further agency action, analysis, or assessment.

5. Executive Order 12630: Government Actions and Interference With Constitutionally Protected Property Rights

This proposed rule would not implement a policy with takings implications. Accordingly, Executive Order 12630 requires no further agency action or analysis.

6. Executive Order 12988: Civil Justice Reform

We have drafted and reviewed this proposed rule in accordance with Executive Order 12988. We wrote this proposed rule to provide a clear legal standard for affected conduct and carefully reviewed it to eliminate drafting errors and ambiguities, thus minimizing litigation and undue burden on the Federal court system. MSHA has determined that this proposed rule would meet the applicable standards in section 3 of Executive Order 12988.

7. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

This proposed rule would have no adverse impact on children. This proposed asbestos standard might benefit children by reducing occupational exposure limits, thus reducing their risk of disease from take-home contamination. Accordingly, Executive Order 13045 requires no further agency action or analysis.

8. Executive Order 13132: Federalism

This proposed rule would not have ''federalism implications,'' because it would 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.'' Accordingly, Executive Order 13132 requires no further agency action or analysis.

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

This proposed rule would not have ''tribal implications,'' because it would not ''have substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.'' Accordingly, Executive Order 13175 requires no further agency action or analysis.

10. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

In accordance with Executive Order 13211, we have reviewed this proposed rule for its impact on the supply, distribution, and use of energy. This proposed rule would regulate both the coal and metal and nonmetal mining sectors. Because this proposed rule would result in negligible yearly costs of less than 0.001 percent of revenues to the coal mining industry, the proposed rule would neither significantly reduce the supply of coal nor significantly increase its price. Regulation of the metal and nonmetal sector of the mining industry has no significant impact on the supply, distribution, or use of energy.

This proposed rule is not a ''significant energy action,'' because it would not be ''likely to have a significant adverse effect on the supply, distribution, or use of energy'' ''(including a shortfall in supply, price increases, and increased use of foreign supplies).'' Accordingly, Executive Order 13211 requires no further agency action or analysis.

11. Executive Order 13272: Proper Consideration of Small Entities in Agency Rulemaking

In accordance with Executive Order 13272, we have thoroughly reviewed this proposed rule to assess and take appropriate account of its potential impact on small businesses, small governmental jurisdictions, and small organizations. As discussed in section VIII.C. above and in chapter V of the PREA, MSHA has determined and certified that this proposed rule would not have a significant economic impact on a substantial number of small entities.

IX. Copy of the OSHA Reference Method (ORM)

MSHA's existing asbestos standards require that the analyst determine fiber concentrations using a phase contrast microscopy analytical method with 400–450X magnification and count fibers 5 μm or longer having a length to diameter aspect ratio of at least 3:1. The OSHA Reference Method contains these requirements.

29 CFR 1910.1001 Appendix A: OSHA Reference Method—Mandatory

This mandatory appendix specifies the procedure for analyzing air samples for asbestos and specifies quality control procedures that must be implemented by laboratories performing the analysis. The sampling and analytical methods described below represent the elements of the available monitoring methods (such as Appendix B of their regulation, the most current version of the OSHA method ID–160, or the most current version of the NIOSH Method 7400). All employers who are required to conduct air monitoring under paragraph (d) of the [OSHA] standard are required to utilize analytical laboratories that use this procedure, or an equivalent method, for collecting and analyzing samples.

Sampling and Analytical Procedure

1. The sampling medium for air samples shall be mixed cellulose ester filter membranes. These shall be designated by the manufacturer as suitable for asbestos counting. See below for rejection of blanks.

2. The preferred collection device shall be the 25-mm diameter cassette with an open-faced 50-mm electrically conductive extension cowl. The 37-mm cassette may be used if necessary but only if written justification for the need to use the 37-mm filter cassette accompanies the sample results in the employee's exposure monitoring record. Do not reuse or reload cassettes for asbestos sample collection.

3. An air flow rate between 0.5 liter/min and 2.5 liters/min shall be selected for the 25-mm cassette. If the 37-mm cassette is used, an air flow rate between 1 liter/min and 2.5 liters/min shall be selected.

4. Where possible, a sufficient air volume for each air sample shall be collected to yield between 100 and 1,300 fibers per square millimeter on the membrane filter. If a filter darkens in appearance or if loose dust is seen on the filter, a second sample shall be started.

5. Ship the samples in a rigid container with sufficient packing material to prevent dislodging the collected fibers. Packing material that has a high electrostatic charge on its surface (*e.g.*, expanded polystyrene) cannot be used because such material can cause loss of fibers to the sides of the cassette.

6. Calibrate each personal sampling pump before and after use with a representative filter cassette installed between the pump and the calibration devices.

7. Personal samples shall be taken in the ''breathing zone'' of the employee (*i.e.*, attached to or near the collar or lapel near the worker's face).

8. Fiber counts shall be made by positive phase contrast using a microscope with an 8 to 10 X eyepiece and a 40 to 45 X objective for a total magnification of approximately 400 X and a numerical aperture of 0.65 to 0.75. The microscope shall also be fitted with a green or blue filter.

9. The microscope shall be fitted with a Walton-Beckett eyepiece graticule calibrated

for a field diameter of 100 micrometers (+/−2 micrometers).

10. The phase-shift detection limit of the microscope shall be about 3 degrees measured using the HSE phase shift test slide as outlined below.

a. Place the test slide on the microscope stage and center it under the phase objective.

b. Bring the blocks of grooved lines into focus.

Note: The slide consists of seven sets of grooved lines (ca. 20 grooves to each block) in descending order of visibility from sets 1 to 7, seven being the least visible. The requirements for asbestos counting are that the microscope optics must resolve the grooved lines in set 3 completely, although they may appear somewhat faint, and that the grooved lines in sets 6 and 7 must be invisible. Sets 4 and 5 must be at least partially visible but may vary slightly in visibility between microscopes. A microscope that fails to meet these requirements has either too low or too high a resolution to be used for asbestos counting.

c. If the image deteriorates, clean and adjust the microscope optics. If the problem persists, consult the microscope manufacturer.

11. Each set of samples taken will include 10 percent blanks or a minimum of 2 field blanks. These blanks must come from the same lot as the filters used for sample collection. The field blank results shall be averaged and subtracted from the analytical results before reporting. A set consists of any sample or group of samples for which an evaluation for this standard must be made. Any samples represented by a field blank having a fiber count in excess of the detection limit of the method being used shall be rejected.

12. The samples shall be mounted by the acetone/triacetin method or a method with an equivalent index of refraction and similar clarity.

13. Observe the following counting rules.

a. Count only fibers equal to or longer than 5 micrometers. Measure the length of curved fibers along the curve.

b. In the absence of other information, count all particles as asbestos that have a length-to-width ratio (aspect ratio) of 3:1 or greater.

c. Fibers lying entirely within the boundary of the Walton-Beckett graticule field shall receive a count of 1. Fibers crossing the boundary once, having one end within the circle, shall receive the count of one half (½). Do not count any fiber that crosses the graticule boundary more than once. Reject and do not count any other fibers even though they may be visible outside the graticule area.

d. Count bundles of fibers as one fiber unless individual fibers can be identified by observing both ends of an individual fiber.

e. Count enough graticule fields to yield 100 fibers. Count a minimum of 20 fields; stop counting at 100 fields regardless of fiber count.

14. Blind recounts shall be conducted at the rate of 10 percent.

Quality Control Procedures

1. *Intralaboratory program.* Each laboratory and/or each company with more than one microscopist counting slides shall establish a statistically designed quality assurance program involving blind recounts and comparisons between microscopists to monitor the variability of counting by each microscopist and between microscopists. In a company with more than one laboratory, the program shall include all laboratories and shall also evaluate the laboratory-to-laboratory variability.

2.a. *Interlaboratory program.* Each laboratory analyzing asbestos samples for compliance determination shall implement an interlaboratory quality assurance program that as a minimum includes participation of at least two other independent laboratories. Each laboratory shall participate in round robin testing at least once every 6 months with at least all the other laboratories in its interlaboratory quality assurance group. Each laboratory shall submit slides typical of its own work load for use in this program. The round robin shall be designed and results analyzed using appropriate statistical methodology.

2.b. All laboratories should also participate in a national sample testing scheme such as the Proficiency Analytical Testing Program (PAT), or the Asbestos Registry sponsored by the American Industrial Hygiene Association (AIHA).

3. All individuals performing asbestos analysis must have taken the NIOSH course for sampling and evaluating airborne asbestos dust or an equivalent course.

4. When the use of different microscopes contributes to differences between counters and laboratories, the effect of the different microscope shall be evaluated and the microscope shall be replaced, as necessary.

5. Current results of these quality assurance programs shall be posted in each laboratory to keep the microscopists informed.

[57 FR 24330, June 8, 1992; 59 FR 40964, Aug. 10, 1994]

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List of Subjects

30 CFR Parts 56 and 57

Air quality, Asbestos, Chemicals, Hazardous substances, Metals, Mine safety and health.

30 CFR Part 71

Air quality, Asbestos, Chemicals, Coal mining, Hazardous substances, Mine safety and health.

Dated: July 14, 2005.

David G. Dye,

Deputy Assistant Secretary of Labor for Mine Safety and Health.

For the reasons set out in the preamble, and under the authority of the Federal Mine Safety and Health Act of 1977, we are proposing to amend chapter I of title 30 of the Code of Federal Regulations as follows.

PART 56—[AMENDED]

1. The authority citation for part 56 would continue to read as follows:

Authority: 30 U.S.C. 811.

2. Section 56.5001 would be amended by revising paragraph (b) to read as follows:

§ 56.5001 Exposure limits for airborne contaminants.

* * * * *

(b) *Asbestos standard.* (1) *Definitions.* Asbestos is a generic term for a number of hydrated silicates that, when crushed or processed, separate into flexible fibers made up of fibrils. As used in this part—

Asbestos means chrysotile, amosite (cummingtonite-grunerite asbestos), crocidolite, anthophylite asbestos, tremolite asbestos, and actinolite asbestos.

Fiber means a particulate form of asbestos 5 micrometers (μm) or longer with a length-to-diameter ratio of at least 3–to–1.

(2) *Permissible Exposure Limits (PELs).*

(i) *Full-shift exposure limit.* A miner's personal exposure to asbestos shall not exceed an 8-hour time-weighted average, full-shift airborne concentration of 0.1 fibers per cubic centimeter of air (f/cc).

(ii) *Excursion limit.* No miner shall be exposed at any time to airborne concentrations of asbestos in excess of 1.0 fiber per cubic centimeter of air (f/cc) as averaged over a sampling period of 30 minutes.

(3) *Measurement of airborne fiber concentration.* Fiber concentration shall be determined by phase contrast microscopy using a method statistically equivalent to the OSHA Reference Method in OSHA's asbestos standard found in 29 CFR 1910.1001, appendix A.

* * * * *

PART 57—[AMENDED]

3. The authority citation for part 57 would continue to read as follows:

Authority: 30 U.S.C. 811.

4. Section 57.5001 would be amended by revising paragraph (b) to read as follows:

§ 57.5001 Exposure limits for airborne contaminants.

* * * * *

(b) *Asbestos standard.* (1) *Definitions.* Asbestos is a generic term for a number of hydrated silicates that, when crushed or processed, separate into flexible fibers made up of fibrils. As used in this part—

Asbestos means chrysotile, amosite (cummingtonite-grunerite asbestos), crocidolite, anthophylite asbestos, tremolite asbestos, and actinolite asbestos.

Fiber means a particulate form of asbestos 5 micrometers (μm) or longer with a length-to-diameter ratio of at least 3–to–1.

(2) *Permissible Exposure Limits (PELs).*

(i) *Full-shift exposure limit.* A miner's personal exposure to asbestos shall not exceed an 8-hour time-weighted average, full-shift airborne concentration of 0.1 fibers per cubic centimeter of air (f/cc).

(ii) *Excursion limit.* No miner shall be exposed at any time to airborne concentrations of asbestos in excess of 1.0 fiber per cubic centimeter of air (f/cc) as averaged over a sampling period of 30 minutes.

(3) *Measurement of airborne fiber concentration.* Fiber concentration shall be determined by phase contrast microscopy using a method statistically equivalent to the OSHA Reference Method in OSHA's asbestos standard found in 29 CFR 1910.1001, appendix A.

* * * * *

PART 71—[AMENDED]

5. The authority citation for part 71 would be revised to read as follows:

Authority: 30 U.S.C. 811, 951, 957.

6. Section 71.701 would be amended by revising paragraphs (c) and (d) to read as follows:

§ 71.701 Sampling; general requirements.

* * * * *

(c) Where concentrations of airborne contaminants in excess of the applicable threshold limit values, permissible exposure limits, or permissible excursions are known by the operator to exist in a surface installation or at a surface worksite, the operator shall immediately provide necessary control measures to assure compliance with § 71.700 or § 71.702, as applicable.

(d) Where the operator has reasonable grounds to believe that concentrations of airborne contaminants in excess of the applicable threshold limit values, permissible exposure limits, or permissible excursions exist, or are likely to exist, the operator shall promptly conduct appropriate air sampling tests to determine the concentration of any airborne contaminant which may be present and immediately provide the necessary control measures to assure compliance with § 71.700 or § 71.702, as applicable.

7. Section 71.702 would be revised to read as follows:

§ 71.702 Asbestos standard.

(a) *Definitions.* Asbestos is a generic term for a number of hydrated silicates that, when crushed or processed, separate into flexible fibers made up of fibrils. As used in this part—

Asbestos means chrysotile, amosite (cummingtonite-grunerite asbestos), crocidolite, anthophylite asbestos, tremolite asbestos, and actinolite asbestos.

Fiber means a particulate form of asbestos 5 micrometers (μm) or longer with a length-to-diameter ratio of at least 3–to–1.

(b) *Permissible Exposure Limits (PELs).* (1) *Full-shift exposure limit.* A miner's personal exposure to asbestos shall not exceed an 8-hour time-weighted average, full-shift airborne concentration of 0.1 fibers per cubic centimeter of air (f/cc).

(2) *Excursion limit.* No miner shall be exposed at any time to airborne concentrations of asbestos in excess of 1.0 fiber per cubic centimeter of air (f/cc) as averaged over a sampling period of 30 minutes.

(c) *Measurement of airborne fiber concentration.* Fiber concentration shall be determined by phase contrast microscopy using a method statistically equivalent to the OSHA Reference Method in OSHA's asbestos standard found in 29 CFR 1910.1001, appendix A.

[FR Doc. 05–14510 Filed 7–28–05; 8:45 am]

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Federal Register

Friday,
July 29, 2005

Part III

Environmental Protection Agency

40 CFR Parts 63 and 65

National Emission Standards for Hazardous Air Pollutants; General Provisions; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 63 and 65

[OAR–2004–0094; FRL–7934–8]

RIN 2060–AM89

National Emission Standards for Hazardous Air Pollutants; General Provisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of reconsideration of final rule; proposed amendments; request for public comment.

SUMMARY: On May 30, 2003, EPA promulgated amendments to the General Provisions to the national emission standards for hazardous air pollutants (NESHAP). On July 29, 2003, we were petitioned to reconsider certain aspects of the final rule amendments. This notice announces our reconsideration and requests public comment.

DATES: *Comments.* Comments must be received on or before September 12, 2005.

Public Hearing. If anyone contacts us requesting to speak at a public hearing by August 8, 2005, a public hearing will be held on August 15, 2005. Persons interested in attending the public hearing should contact Ms. Janet Eck at (919) 541–7946 to verify that a hearing will be held.

ADDRESSES: Submit your comments, identified by Docket ID No. OAR–2004–0094, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Agency Web Site: http://www.epa.gov/edocket.* EDOCKET, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.
- *Email: a-and-r-docket@epa.gov*, Attention Docket ID No. OAR–2004–0094.
- *Facsimile:* (202) 566–1741, Attention Docket ID No. OAR–2004–0094.
- *Mail:* U.S. Environmental Protection Agency, EPA West (Air Docket), 1200 Pennsylvania Ave., NW., Room: B108, Mail Code: 6102T, Washington, DC, 20460, Attention E-Docket ID No. OAR–2004–0094.
- *Hand Delivery:* EPA Docket Center, (Air Docket), U.S. Environmental Protection Agency, 1301 Constitution Ave., NW., Room: B102, Mail Code: 6102T, Washington, DC, 20460, Attention Docket ID No. OAR–2004–0094. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. OAR–2004–0094. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.epa.gov/edocket*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through EDOCKET, regulations.gov, or e-mail. Send or deliver information identified as CBI only to the following address: Mr. Roberto Morales, OAQPS Document Control Officer, U.S. EPA (C404–02), Attention Docket ID No. OAR–2003–0161, Research Triangle Park, NC 27711. Clearly mark the part or all of the information that you claim to be CBI. The EPA EDOCKET and the Federal regulations.gov Web sites are ''anonymous access'' systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through EDOCKET or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Public Hearing: If a public hearing is held, it will be held at EPA's Campus located in Research Triangle Park, NC or an alternate site nearby.

Docket: 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 Air and Radiation Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Mr. Rick Colyer, Emission Standards Division (C504–05), EPA, Research Triangle Park, North Carolina 27711, telephone (919) 541–5262, e-mail *colyer.rick@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

Regulated Entities. Categories and entities potentially regulated by this action include sources in all source categories regulated under 40 CFR part 63 that must develop and implement a startup, shutdown, and malfunction plan.

Worldwide Web (WWW). In addition to being available in the docket, an electronic copy of today's proposal will also be available on the WWW through the Technology Transfer Network (TTN). Following signature, a copy of this action will be posted on the TTN's policy and guidance page for newly proposed rules at *http://www.epa.gov/ttn/oarpg.* The TTN provides information and technology exchange in various areas of air pollution control.

II. Background

The NESHAP General Provisions were first promulgated on March 16, 1994 (59 FR 12408). We subsequently proposed a variety of amendments to the initial rule based in part on settlement negotiations with industrial trade organizations, which had sought judicial review of the rule, and in part on our practical experience in developing and implementing NESHAP, also know as maximum achievable control technology (MACT) standards, under the General Provisions (66 FR 16318, March 23, 2001). We then promulgated final amendments to the General Provisions pursuant to that proposal (67 FR 16582, April 5, 2002).

On April 25, 2002, Sierra Club filed a petition seeking judicial review of the final rule, *Sierra Club* v. *U.S. Environmental Protection Agency*, No. 02–1135 (DC Circuit). The Sierra Club also filed a petition seeking administrative reconsideration of certain provisions in the final rule,

pursuant to Clean Air Act (CAA) section 307(d)(7)(B).

Shortly after the filing of the petition, EPA commenced discussions with the Sierra Club concerning a settlement agreement. We reached initial agreement with the Sierra Club on the terms of a settlement and lodged the tentative agreement with the court on August 15, 2002, under which we agreed to propose a rule to make specified amendments to the General Provisions.

Following execution of the final settlement agreement, we published proposed amendments effectuating its terms (67 FR 72875, December 9, 2002). Most of the General Provisions amendments dealt with clarifying the general duty to minimize emissions and its relationship to the startup, shutdown, and malfunction (SSM) plans required under 40 CFR 63.6(e)(3). We also proposed to require that all sources subject to § 63.6(e)(3) submit their SSM plans to their permitting authority, instead of only when requested.

Many commenters vigorously opposed the proposed new requirement to routinely submit their SSM plans instead of maintaining the plans on site and submitting them only when requested. They cited the burden of untangling the plans from operating procedures and CBI. They also noted the significant paperwork burden that would be imposed on the permitting authority.

We agreed with the commenters regarding the unnecessary burden and that access to the plans can still be maintained in less burdensome ways. We issued final amendments (68 FR 32586, May 30, 2003) that pared the broad requirement for submittal of all plans and require that a source must promptly submit a copy of its plan to its permitting authority if and when the permitting authority requests that the plan be submitted. The final amendments also require the permitting authority to obtain a copy of the plan from a facility if a member of the public makes a specific and reasonable request to examine or receive a copy. We noted that the permitting authority should work with the requester to clarify any request if it is overly broad or insufficiently specific.

After promulgation of the amendments, the NRDC petitioned EPA on July 29, 2003, under section 307(d)(7)(D) of the CAA, to reconsider the public access aspects of the SSM plan provisions. Specifically, NRDC opposed the criteria for the public to access SSM plans, *i.e.*, that a plan may be obtained only if the request is ''specific and reasonable.'' The NRDC concluded that the final amendments allow the Administrator to block a citizen's access to SSM plans just by declaring the request not ''specific and reasonable.''

Today, we are announcing our reconsideration of these issues arising from the final amendments of May 30, 2003, regarding SSM plans, and are requesting public comment on these issues.

III. Proposed Response to NRDC's Reconsideration Petition

The General Provisions to 40 CFR part 63 require that ''at all times, including periods of startup, shutdown, and malfunction, the owner or operator must operate and maintain any affected source, including associated air pollution control equipment and monitoring equipment, in a manner consistent with safety and good air pollution control practices for minimizing emissions. During a period of startup, shutdown, or malfunction, this general duty to minimize emissions requires that the owner or operator reduce emissions from the affected source to the greatest extent which is consistent with safety and good air pollution control practices.'' This is the so-called ''general duty'' clause and the applicable requirement under MACT standards for emission reductions during periods of SSM.

This general duty clause is modeled on the general duty clause in the General Provisions to 40 CFR part 60, which governs new source performance standards (NSPS). These NSPS are technology based as are the MACT standards developed under 40 CFR part 63. The general duty clause is designed to recognize that technology-based standards may not always be met, as technology fails occasionally beyond the control of the owner or operator. Because emission control technology is normally designed to minimize emissions under normal operating conditions, periods of startup and shutdown may also cause technology standards to be exceeded beyond the control of the owner or operator. It is during these periods of SSM that the general duty clause becomes most prominent. If the standards cannot be met during a period of SSM, then the owner or operator must take steps to minimize emissions to the extent practicable. It is important to note that, for certain source categories where startups and shutdowns occur frequently and where the Agency was able to develop specific standards or additional provisions for emission control during startups and shutdowns, those standards have been included in specific MACT standards. One example is contained in the NESHAP for Halogenated Solvent Cleaners (40 CFR part 63, subpart T). In these cases, the specific MACT standards take precedence over the General Provisions at issue in this rulemaking.

While the NSPS rely solely on the general duty clause to minimize emissions during SSM periods, 40 CFR part 63 further requires that owners or operators develop and implement a written SSM plan that describes procedures for operating and maintaining the source during periods of SSM, and a program of corrective action for malfunctioning process, air pollution control, and monitoring equipment used to comply with the relevant standards. A primary purpose of the plan is to ensure that, during periods of SSM, the owner or operator operates and maintains each affected source, including associated air pollution control and monitoring equipment, in a manner which satisfies the general duty clause of 40 CFR 63.6(e)(1)(i). The Agency believes that by requiring owners or operators to anticipate possible SSM scenarios and to decide ahead of time how to minimize emissions in these situations, the requirement to prepare an SSM plan will play a valuable role. Therefore, an adequate SSM Plan must be developed consistent with the requirements of 40 CFR 63.6(e) and other 40 CFR part 63 subparts that have SSM-related requirements.

While the requirement is that an owner or operator develop and implement an SSM plan, the plan itself does not become part of, and is not incorporated into, the source's title V permit. Thus, the source is required to have an SSM plan, but the provisions in the plan are not applicable requirements. Again, the applicable requirement during periods of SSM is the general duty to minimize emissions.

The SSM plan documents procedures that source owners or operators should follow during periods of SSM. These plans are source-specific and often are not standalone documents. Many plans reference other in-plant operating procedures and also often contain CBI. Plans must remain flexible and for large facilities may be revised frequently. Establishing the specific procedures in SSM plans as applicable requirements may unnecesarily constrain a source during a period where unanticipated events call for maximum flexibility. While the SSM plan may go a long way toward minimizing emissions, making the plan an applicable requirement would not necessarily ensure that

emissions are minimized during these periods.

To clarify and emphasize that the applicable requirement is the general duty to minimize emissions and not the specifics in the SSM plan itself, we are proposing to retract the requirement to implement the plan during periods of SSM. This is consistent with the concept that the plan specifics are not applicable requirements and thus cannot be required to be followed. Nonetheless, the general duty to minimize emissions remains intact and is the applicable requirement; determination of whether a source met its obligation during periods of SSM can be made in part by whether a source followed an adequate plan. Although a source would not be required to follow the plan, it still must report periods of SSM and whether the plan was followed, as discussed below. Indeed, if, during an SSM event, a source is not in compliance with the emission limits or parameter values applicable under normal operations and has not followed its SSM plan, this may be evidence that the source has not complied with the general duty clause obligation. However, the source may be able to offer a defense for following an alternative approach that is more effective. In addition, we note that following the SSM plan itself is no ''safe harbor'' for sources if the plan is found to be deficient. That is, a source could not use ''following the plan'' as a defense for an inadequate program to minimize emissions.

We believe, however, that SSM plans help owners or operators by consciously having them focus on steps to minimize emissions during SSM prior to the events happening. It also establishes consistent operating procedures during these periods so that facility operators can address the same types of events the same way. The plan also aids permitting authorities so that each event does not have to be investigated individually. The inspector may review the plan, audit some SSM events to see if the plan was followed, and assess whether the plan was adequate.

The SSM plan required under 40 CFR part 63 is further tied to recordkeeping and reporting requirements that alert permitting authorities to continuing potential problems at a facility. All periods of SSM must be reported. If the SSM plan is not followed and the applicable emission limitation is exceeded, this fact, and the actions taken by the source, must be reported within 2 working days after commencing actions inconsistent with the plan, followed by a letter within 7 working days after the end of the event. If the source follows the SSM plan (whether or not the applicable emission limitation is exceeded), or if the plan is not followed and the applicable emission limitation is not exceeded, reports are due semiannually.

These periodic and immediate SSM reports provide the permitting authority with adequate information to determine if the facility has SSM problems above and beyond what might normally be expected. The types and frequency of SSM events will vary from source category to source category. Sources that report much higher number of SSM events than other sources within the same source category would be subject to higher scrutiny by the permitting authority, by EPA, and presumably by the public. Inspectors would examine the facility's records and its SSM plan to determine its adequacy and whether it conformed to the general duty clause. If not, the facility could be cited for violating the general duty clause and required to revise its plan to minimize emissions to the satisfaction of the permitting authority. As such, the reports identify potential problems that can be followed up with appropriate action.

We are also proposing to make a conforming change to startup and shutdown recordkeeping consistent with a reporting change to startups and shutdowns we made to 40 CFR 63.10(d)(5)(i) on May 30, 2003 at 68 FR 32586. In that notice, we relieved the owner or operator from detailed reporting for startups and shutdowns when the applicable standards are not exceeded. In this notice, we propose to make similar changes for startup and shutdown recordkeeping. This change would not affect recordkeeping for malfunctions.

Review of each SSM plan, from each facility, by the permitting authority, for adequacy prior to implementation is neither reasonable nor necessary. There are thousands of sources required to develop SSM plans, and each plan is tailored to its source. Some plans are closely tied and cross referenced to other operating materials at the source. Many, and perhaps most, plans contain CBI. The burden on the permitting authorities to review every plan would be enormous. We believe that the proposed SSM reporting regimen accomplishes the same result in a much more efficient way to identify poor performers and inadequate plans. The SSM provisions as a whole would form a coordinated program for minimizing emissions and alerting permitting authorities to problems and noncompliance with the general duty clause.

In its petition for reconsideration, NRDC argues that, under the CAA, SSM plans must be made available to the public because they are ''compliance plans'' within the meaning of sections 502(b)(8) and 503(e) of the CAA. We disagree. The term ''compliance plan'' (as well as the related term ''schedule of compliance'') has a specific meaning under the CAA. A compliance plan, which a source must submit along with its permit application, contains a brief description of method or methods that the source is using or plans to use to meet each applicable requirement.

The compliance plan must also include a ''schedule of compliance.'' If a source is in compliance with all applicable requirements, and if there are no promulgated but not-yet-effective additional requirements that will become applicable to the source in the future, then the schedule of compliance simply notes these facts. If the source will become subject to a new EPA or State implementation plan (SIP) requirement that is not yet in effect but will become applicable in the future, or if the source is out of compliance with a currently applicable requirement, then the schedule of compliance takes on added importance. In either case, it must outline the steps that the source will take to come into compliance and include a time line for taking each of those steps. It is clear, however, that an SSM plan is neither a ''compliance plan'' nor a ''schedule of compliance'' as those terms are used in the CAA.

In arguing to the contrary, NRDC construes statements in our March 23, 2001, and December 9, 2002, proposed rules as recognizing that SSM plans are compliance plans. To the extent that these notices stated or implied that SSM plans are compliance plans, these statements are not consistent with sections 502(b)(8) and 503(e) of the CAA.

It is important to note that the Administrator (or an authorized permitting authority) may at any time require a facility owner or operator to submit a copy of an SSM plan under section 114(a) of the CAA. Under section 114(c), the public may also obtain a copy of any SSM plan obtained by the Administrator (or authorized permitting authority) under section 114(a). In its petition for reconsideration, NRDC cites a technical support document accompanying the May 30, 2003 final rule which suggests that, under sections 114(c) and 503(e), there is a general obligation to provide public access to SSM plans, regardless of whether EPA or the permitting authority had obtained an SSM plan from a source under section 114(a). We

no longer believe this to be a correct interpretation of section 114(c) or 503(e).

As noted above, section 114(c) of the CAA simply provides that, when EPA or an authorized permitting authority has taken action to request information such as an SSM plan under section 114(a), then the public may obtain a copy of that information (subject to statutory limitations about confidential information). Section 503(e) of the CAA states that ''[a] copy of each permit application, compliance plan (including the schedule of compliance), emissions or compliance monitoring report, certification, and each permit issued under this title, shall be available to the public.'' As noted above, an SSM plan is not part of a permit application or a permit and is not a compliance plan, a schedule of compliance, an emissions or compliance monitoring report, or a certification within the meaning of section 503(e).

After reviewing NRDC's petition for reconsideration, we have concluded that the CAA does not require EPA or a permitting authority to obtain SSM plans at the request of the public. Nor does the CAA provide EPA with authority to impose such a requirement on permitting authorities. As noted above, however, the public is entitled to have access to an SSM plan if EPA or a permitting authority takes action to obtain such a plan under section 114(a) of the CAA.

We do not believe that mandating public access to such plans is necessary for public oversight of the applicable requirement or of MACT during SSM periods. In fact, as noted above, we are concerned that any mandate for public access could make SSM plans less effective, because a source would be less likely to include in its plan sensitive details about its operations—details that are likely to be effective in minimizing emissions during periods of SSM. As previously explained in this notice, the general duty, rather than the SSM plan itself, is the applicable requirement during startup, shutdown, and malfunction periods. In effect, the general duty is MACT for these specified periods in which the control technology for normal operations is inapplicable.

To make the regulatory status and significance of SSM plans clear, we are proposing to remove the provision in 40 CFR 63.6(e)(3)(v) that requires a permitting authority to obtain an SSM plan under certain conditions. Consequently, we are proposing to deny NRDC's request to revise the 40 CFR part 63 General Provisions to allow unlimited public access to a source's SSM plan.

We recognize that, in some cases, members of the public may want to obtain SSM plans—especially where a source has reported (as required under our rules) an unusually high number of SSM events relative to similar sources. In such cases, public oversight of SSM plans could be useful to EPA, permitting authorities, and sources themselves. Many sources will be responsive to direct community requests without any governmental involvement at all. To the extent that government involvement is necessary, we believe that the mechanisms and conditions under which a permitting authority will respond to a request that it obtain an SSM plan is best left at the local level.

Finally, we also note that EPA and State and local environmental agencies are actively working with industrial facilities to reduce emissions associated with startups, shutdowns, and malfunctions. One major refining and chemical manufacturing company, Flint Hills Resources (FHR), recently approached EPA to propose a significant collaborative project intended to reduce SSM emissions from FHR refineries and chemical manufacturing facilities. The main goal of this collaboration, which is now under way, is to reduce emissions from SSM's through development and implementation of an approach that establishes explicit operational expectations and defines good engineering practices and good air pollution control practices at its facilities. The project aims to evaluate and continuously improve SSM practices with the goal of establishing state-of-the-art practices that can be replicated by other facilities. The project will provide EPA and State regulators with information and data that could help inform how to improve SSM practices across the regulated community. The project will also provide the public with improved information on FHR's SSM performance.

IV. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the EPA must determine whether the regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Executive Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, OMB has notified EPA that it considers this a ''significant regulatory action'' within the meaning of the Executive Order. The EPA has submitted this action to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

B. Paperwork Reduction Act

This action does not impose any new information collection burden. The amendments eliminate the requirement for sources to follow their SSM plan, but do not require any additional recordkeeping and reporting, or any other information collection obligation. However, OMB has previously approved the information collection requirements contained in the existing regulations of 40 CFR part 63 under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.* A copy of the OMB approved Information Collection Request (ICR) for any of the existing regulations may be obtained from Susan Auby, Collection Strategies Division; U.S. EPA (2822T); 1200 Pennsylvania Ave., NW., Washington, DC 20460, or by calling (202) 566–1672.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of

information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of the proposed amendments on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201 for each applicable subpart; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and that is not dominant in its field.

After considering the economic impacts of the proposed amendments on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analysis is to identify and address regulatory alternatives which minimize any significant economic impact on a substantial number of small entities (5 U.S.C. 603–604). Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule.

Small entities that are subject to MACT standards would not be required to take any action under this proposal; the amendments simply remove the requirement that sources must follow their SSM plan. However, we do not expect sources will address periods of SSM any differently than they do now.

Based on the considerations above, we have concluded that the proposed amendments will relieve regulatory burden for all affected small entities. Nevertheless, we continue to be interested in the potential impacts of the proposed amendments on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures by State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that these proposed amendments do not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. Sources subject to MACT standards would not be required to take any action under this proposal, including sources owned or operated by State, local, or tribal governments. Thus, the proposed amendments are not subject to the requirements of sections 202 and 205 of UMRA. EPA has determined that the proposed amendments contain no regulatory requirements that might significantly or uniquely affect small governments because they contain no requirements that apply to such governments or impose obligations upon them. Thus, the proposed amendments are not subject to the requirements of section 203 of the UMRA.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

The proposed amendments do not have federalism implications. They will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. These amendments would impose no new requirements. Thus, Executive Order 13132 does not apply to these proposed amendments.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on the proposed amendments from State and local officials.

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

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' These proposed amendments do not have tribal

implications, as specified in Executive Order 13175. They 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. Any tribal government that owns or operates a source subject to MACT standards would not be required to take any action under this proposal. Thus, Executive Order 13175 does not apply to these proposed amendments.

The EPA specifically solicits additional comment on the proposed amendments from tribal officials.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

The EPA interprets Executive Order 13045 as applying only to regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. The proposed amendments are not subject to Executive Order 13045 because all MACT standards governed by the General Provisions are based on technology performance and not on health or safety risks.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

The proposed amendments are not a ''significant energy action'' as defined in Executive Order 13211 (66 FR 28355, May 22, 2001) because they are not likely to have a significant adverse effect on the supply distribution, or use of energy. The proposed amendments would impose no new requirements.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995, Public Law No. 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards (VCS) in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. The VCS are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable VCS.

The proposed amendments do not involve technical standards. Therefore, EPA is not considering the use of any VCS. EPA welcomes comments on this aspect of the proposed amendments, and specifically invites the public to identify potentially applicable VCS and to explain why such standards should be used in the proposed amendments.

List of Subjects in 40 CFR Parts 63 and 65

Environmental protection, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

Dated: June 30, 2005.

Stephen L. Johnson,

Administrator.

For the reasons cited in the preamble, title 40, chapter 1, parts 63 and 65 of the Code of Federal Regulations is proposed to be amended as follows:

PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

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

Subpart A—[Amended]

2. Section 63.6 is amended by:

a. Revising the first sentence in paragraph (e)(1)(ii);

b. Revising the first sentence in paragraph (e)(3)(i) introductory text;

c. Removing and reserving paragraph (e)(3)(ii);

d. Revising the first sentence in paragraph (e)(3)(iii);

e. Removing the sixth sentence in paragraph (e)(3)(v); and

f. Revising the first sentence in paragraph (e)(3)(ix) to read as follows:

§ 63.6 Compliance with standards and maintenance requirements.

* * * * *

(e) * * *

(1)(i) * * *

(ii) Malfunctions must be corrected as soon as practicable after their occurrence. * * *

* * * * *

(3) * * *

(i) The owner or operator of an affected source must develop a written startup, shutdown, and malfunction plan that describes, in detail, procedures for operating and maintaining the source during periods of startup, shutdown, and malfunction; and a program of corrective action for malfunctioning process, air pollution control, and monitoring equipment used to comply with the relevant standard. * * *

* * * * *

(ii) [Reserved]

(iii) When actions taken by the owner or operator during a startup or shutdown (and the startup or shutdown causes the source to exceed any applicable emission limitation in the relevant emission standards), or malfunction (including actions taken to correct a malfunction) are consistent with the procedures specified in the affected source's startup, shutdown, and malfunction plan, the owner or operator must keep records for that event which demonstrate that the procedures specified in the plan were followed. * * *

* * * * *

(ix) The title V permit for an affected source must require that the owner or operator develop a startup, shutdown, and malfunction plan which conforms to the provisions of this part. * * *

* * * * *

3. Section 63.8 is amended by revising paragraph (c)(1)(iii) to read as follows:

§ 63.8 Monitoring requirements.

* * * * *

(c) * * *

(1) * * *

(iii) The owner or operator of an affected source must develop a written startup, shutdown, and malfunction plan for CMS as specified in § 63.6(e)(3).

* * * * *

4. Section 63.10 is amended by revising paragraphs (b)(2)(i) and (ii), and the first sentence in paragraph (v) to read as follows:

§ 63.10 Recordkeeping and reporting requirements.

* * * * *

(b) * * *

(2) * * *

(i) The occurrence and duration of each startup or shutdown when the startup or shutdown causes the source

to exceed any applicable emission limitation in the relevant emission standards;

(ii) The occurrence and duration of each malfunction of operation (*i.e.*, process equipment) or the required air pollution control and monitoring equipment;

* * * * *

(v) All information necessary to demonstrate conformance with the affected source's startup, shutdown, and malfunction plan (see § 63.6(e)(3)) when all actions taken during periods of startup or shutdown (and the startup or shutdown causes the source to exceed any applicable emission limitation in the relevant emission standards), and malfunction (including corrective actions to restore malfunctioning process and air pollution control and monitoring equipment to its normal or usual manner of operation) are consistent with the procedures specified in such plan. * * *

* * * * *

Subpart F—[Amended]

5. Section 63.105 is amended by revising paragraph (d) to read as follows:

§ 63.105 Maintenance wastewater requirements.

* * * * *

(d) The owner or operator shall incorporate the procedures described in paragraphs (b) and (c) of this section as part of the startup, shutdown, and malfunction plan required under § 63.6(e)(3).

* * * * *

Subpart G—[Amended]

6. Section 63.152 is amended by:

a. Revising paragraph (c)(2)(ii)(C)(*1*); and

b. Revising paragraph (g)(2)(iv)(A) to read as follows:

§ 63.152 General reporting and continuous records.

* * * * *

(c) * * *

(2) * * *

(ii) * * *

(C) * * *

(*1*) * * * During periods of startup, shutdown, or malfunction when the source is operated during such periods in accordance with § 63.6(e).

* * * * *

(g) * * *

(2) * * *

(iv) * * *

(A) The daily average value during any startup, shutdown, or malfunction shall not be considered an excursion for purposes of this paragraph (g)(2), if the owner or operator operates the source during such periods in accordance with § 63.6(e).

* * * * *

Subpart L—[Amended]

7. Section 63.310 is amended by:

a. Revising paragraph (b); and

b. Revising paragraph (c) to read as follows:

§ 63.310 Requirements for startups, shutdowns, and malfunctions.

* * * * *

(b) Each owner or operator of a coke oven battery shall develop, according to paragraph (c) of this section, a written startup, shutdown, and malfunction plan that describes procedures for operating the battery, including associated air pollution control equipment, during a period of a startup, shutdown, or malfunction in a manner consistent with good air pollution control practices for minimizing emissions, and procedures for correcting malfunctioning process and air pollution control equipment as quickly as practicable.

(c) Malfunctions shall be corrected as soon as practicable after their occurrence.

* * * * *

Subpart N—[Amended]

8. Section 63.342 is amended by:

a. Revising paragraphs (f)(1)(i) and (ii); and

b. Revising the first sentence in paragraph (f)(3)(i) introductory text to read as follows:

§ 63.342 Standards.

* * * * *

(f) * * *

(1)(i) At all times, including periods of startup, shutdown, and malfunction, owners or operators shall operate and maintain any affected source, including associated air pollution control devices and monitoring equipment, in a manner consistent with good air pollution control practices.

(ii) Malfunctions shall be corrected as soon as practicable after their occurrence.

* * * * *

(3) *Operation and maintenance plan.* (i) The owner or operator of an affected source subject to paragraph (f) of this section shall prepare an operation and maintenance plan no later than the compliance date, except for hard chromium electroplaters and the chromium anodizing operations in California which have until January 25, 1998. * * *

* * * * *

Subpart U—[Amended]

§ 63.480 [Amended]

9. Section 63.480 is amended by removing the third sentence in paragraph (j)(1).

10. Section 63.506 is amended by:

a. Revising the first sentence in paragraph (b)(1) introductory text; and

b. Revising paragraph (h)(2)(iv)(A) to read as follows:

§ 63.506 General recordkeeping and reporting provisions.

* * * * *

(b) * * *

(1) * * * The owner or operator of an affected source shall develop a written startup, shutdown, and malfunction plan as specified in § 63.6(e)(3). * * *

* * * * *

(h) * * *

(2) * * *

(iv) * * *

(A) The daily average or batch cycle daily average value during any startup, shutdown, or malfunction shall not be considered an excursion for purposes of paragraph (h)(2) of this section, if the owner or operator operates the source during such periods in accordance with § 63.6(e).

* * * * *

Subpart Y—[Amended]

11. Section 63.562 is amended by revising the first sentence of paragraph (e)(2) introductory text to read as follows:

§ 63.562 Standards.

* * * * *

(e) * * *

(2) The owner or operator of an affected source shall develop a written operation and maintenance plan that describes in detail a program of corrective action for varying (*i.e.*, exceeding baseline parameters) air pollution control equipment and monitoring equipment, based on monitoring requirements in § 63.564, used to comply with these emissions standards. * * *

* * * * *

Subpart AA—[Amended]

12. Section 63.600 is amended by revising paragraph (e) to read as follows:

§ 63.600 Applicability.

* * * * *

(e) The emission limitations and operating parameter requirements of

this subpart do not apply during periods of startup, shutdown, or malfunction, as those terms are defined in § 63.2, provided that the source is operated in accordance with § 63.6(e)(1)(i).

Subpart BB—[Amended]

13. Section 63.620 is amended by revising paragraph (e) to read as follows:

§ 63.620 Applicability.

* * * * *

(e) The emission limitations and operating parameter requirements of this subpart do not apply during periods of startup, shutdown, or malfunction, as those terms are defined in § 63.2, provided that the source is operated in accordance with § 63.6(e)(1)(i).

Subpart DD—[Amended]

14. Section 63.695 is amended by revising paragraph (e)(6)(i)(A) to read as follows:

§ 63.695 Inspection and monitoring requirements.

* * * * *

(e) * * *

(6) * * *

(i) * * *

(A) During a period of startup, shutdown, or malfunction when the affected facility is operated during such period in accordance with § 63.6(e); or

* * * * *

Subpart GG—[Amended]

15. Section 63.743 is amended by revising the first sentence in paragraph (b) introductory text as follows:

§ 63.743 Standards: General.

* * * * *

(b) * * * Each owner or operator that uses an air pollution control device or equipment to control HAP emissions shall prepare a startup, shutdown, and malfunction plan in accordance with § 63.6. * * *

* * * * *

Subpart HH—[Amended]

16. Section 63.773 is amended by revising paragraph (d)(8)(i)(A) to read as follows:

§ 63.773 Inspection and monitoring requirements.

* * * * *

(d) * * *

(8) * * *

(i) * * *

(A) During a period of startup, shutdown, or malfunction when the affected facility is operated during such period in accordance with § 63.6(e); or

* * * * *

Subpart LL—[Amended]

17. Section 63.848 is amended by revising the first sentence in paragraph (h) to read as follows:

§ 63.848 Emission monitoring requirements.

* * * * *

(h) * * * If a monitoring device for a primary control device measures an operating parameter outside the limit(s) established pursuant to § 63.847(h), if visible emissions indicating abnormal operation are observed from the exhaust stack of a control device during a daily inspection, or if a problem is detected during the daily inspection of a wet roof scrubber for potline secondary emission control, the owner or operator shall initiate corrective action procedures within 1 hour. * * *

* * * * *

18. Section 63.850 is amended by revising the first sentence in paragraph (c) introductory text to read as follows:

§ 63.850 Notification, reporting, and recordkeeping requirements.

* * * * *

(c) * * * The owner or operator shall develop a written plan as described in § 63.6(e)(3) that contains specific procedures to be followed for operating the source and maintaining the source during periods of startup, shutdown, and malfunction and a program of corrective action for malfunctioning process and control systems used to comply with the standards. * * *

* * * * *

Subpart MM—[Amended]

19. Section 63.864 is amended by revising paragraph (k)(1) introductory text and the first sentence in paragraph (k)(2)(v) to read as follows:

§ 63.864 Monitoring requirements.

* * * * *

(k) * * * (1) Following the compliance date, owners or operators of all affected sources or process units are required to implement corrective action if the monitoring exceedances in paragraphs (k)(1)(i) through (vi) of this section occur:

* * * * *

(2) * * *

(v) For the hog fuel dryer at Weyerhaeuser Paper Company's Cosmopolis, Washington facility (Emission Unit No. HD–14), when corrective action is not initiated within 1 hour of a bag leak detection system alarm and the alarm is engaged for more than 5 percent of the total operating time in a 6-month block reporting period. * * *

* * * * *

20. Section 63.866 is amended by revising the first sentence in paragraph (a) introductory text to read as follows:

§ 63.866 Recordkeeping requirements.

(a) * * * The owner or operator must develop a written plan as described in § 63.6(e)(3) that contains specific procedures to be followed for operating the source and maintaining the source during periods of startup, shutdown, and malfunction, and a program of corrective action for malfunctioning process and control systems used to comply with the standards. * * *

* * * * *

Subpart SS—[Amended]

21. Section 63.998 is amended by:

a. Revising paragraph (b)(2)(iii);

b. Revising paragraph (b)(6)(i)(A); and

c. Revising the second sentence in paragraph (b)(6)(ii) to read as follows:

§ 63.998 Recordkeeping requirements.

* * * * *

(b) * * *

(2) * * *

(iii) Startups, shutdowns, and malfunctions, if the owner or operator operates the source during such periods in accordance with § 63.6(e) and maintains the records specified in paragraph (d)(3) of this section.

* * * * *

(6)(i) * * *

(A) The daily average value during any startup, shutdown, or malfunction shall not be considered an excursion if the owner or operator operates the source during such periods in accordance with § 63.6(e) and maintains the records specified in paragraph (d)(3) of this section.

* * * * *

(ii) * * * If a source has developed a startup, shutdown and malfunction plan, and a monitored parameter is outside its established range or monitoring data are not collected during periods of start-up, shutdown, or malfunction (and the source is operated during such periods in accordance with § 63.6(e)) or during periods of nonoperation of the process unit or portion thereof (resulting in cessation of the emissions to which monitoring applies), then the excursion is not a violation and, in cases where continuous monitoring is required, the excursion does not count as the excused excursion for determining compliance.

* * * * *

Subpart YY—[Amended]

22. Section 63.1108 is amended by:

a. Removing the second sentence in paragraph (a)(1) introductory text;

b. Revising paragraph (a)(6); and

c. Revising paragraph (b)(2)(i) to read as follows:

§ 63.1108 Compliance with standards and operation and maintenance requirements.

(a) * * *

(6) Malfunctions shall be corrected as soon as practical after their occurrence.

* * * * *

(b) * * *

(2) * * *

(i) During periods of startup, shutdown, or malfunction (and the source is operated during such periods in accordance with § 63.6(e)), or

* * * * *

23. Section 63.1111 is amended by revising the first and fifth sentences in paragraph (a)(1) introductory text and revising paragraph(a)(2) to read as follows:

§ 63.1111 Startup, shutdown, and malfunction.

(a) * * * (1) *Description and purpose of plan.* The owner or operator of an affected source shall develop a written startup, shutdown, and malfunction plan that describes, in detail, procedures for operating and maintaining the affected source during periods of startup, shutdown, and malfunction. * * * The requirement to develop this plan shall be incorporated into the source's title V permit. * * *

* * * * *

(2) *Operation of source.* During periods of startup, shutdown, and malfunction, the owner or operator of an affected source subject to this subpart YY shall operate and maintain such affected source (including associated air pollution control equipment and CPMS) in a manner consistent with safety and good air pollution control practices for minimizing emissions to the extent practical.

* * * * *

Subpart CCC—[Amended]

24. Section 63.1164 is amended by revising the last sentence in paragraph (c) introductory text and revising paragraph (c)(1) to read as follows:

§ 63.1164 Reporting requirements.

* * * * *

(c) * * * Malfunctions must be corrected as soon as practicable after their occurrence.

(1) *Plan.* As required by § 63.6(e)(3) of subpart A of this part, the owner or operator shall develop a written startup, shutdown, and malfunction plan that describes, in detail, procedures for operating and maintaining the source during periods of startup, shutdown, or malfunction, and a program of corrective action for malfunctioning process and air pollution control equipment used to comply with the relevant standards.

* * * * *

Subpart EEE—[Amended]

25. Section 63.1206 is amended by revising paragraphs (c)(2)(v)(A)(*2*) and (c)(2)(v)(B)(*4*) to read as follows:

§ 63.1206 When and how must you comply with the standards and operating requirements?

* * * * *

(c) * * *

(2) * * *

(v) * * *

(A) * * *

(*2*) Although the automatic waste feed cutoff requirements continue to apply during a malfunction, an exceedance of an emission standard monitored by a CEMS or COMS or operating limit specified under § 63.1209 is not a violation of this subpart EEE if you take the corrective measures prescribed in § 63.6(e).

* * * * *

(B) * * *

(*4*) Although the automatic waste feed cutoff requirements of this paragraph (c)(2)(v)(B)(*4*) apply during startup and shutdown, an exceedance of an emission standard or operating limit is not a violation of this subpart EEE if you operate in accordance with § 63.6(e).

* * * * *

Subpart GGG—[Amended]

26. Section 63.1258 is amended by revising paragraph (b)(8)(iv) to read as follows:

§ 63.1258 Monitoring requirements.

* * * * *

(b) * * *

(8) * * *

(iv) Periods of time when monitoring measurements exceed the parameter values as well as periods of inadequate monitoring data do not constitute a violation if they occur during a start-up, shutdown, or malfunction, and the facility operates in accordance with § 63.6(e).

* * * * *

27. Section 63.1259 is amended by revising the first sentence in paragraph (a)(3) introductory text to read as follows:

§ 63.1259 Recordkeeping requirements.

(a) * * *

(3) * * * The owner or operator of an affected source shall develop a written startup, shutdown, and malfunction plan as specified in § 63.6(e)(3). * * *

* * * * *

Subpart HHH—[Amended]

28. Section 63.1283 is amended by revising paragraph (d)(8)(i)(A) to read as follows:

§ 63.1283 Inspection and monitoring requirements.

* * * * *

(d) * * *

(8) * * *

(i) * * *

(A) During a period of startup, shutdown, or malfunction when the affected facility is operated during such period in accordance with § 63.6(e); or

* * * * *

Subpart JJJ—[Amended]

§ 63.1310 [Amended]

29. Section 63.1310 is amended by removing the third sentence in paragraph (j)(1).

30. Section 63.1335 is amended by revising the first sentence in paragraph (b)(1) introductory text to read as follows:

§ 63.1335 General recordkeeping and reporting provisions.

* * * * *

(b) * * *

(1) * * * The owner or operator of an affected source shall develop a written startup, shutdown, and malfunction plan as specified in § 63.6(e)(3). * * *

* * * * *

Subpart MMM—[Amended]

31. Section 63.1366 is amended by revising paragraph (b)(8)(iv) to read as follows:

§ 63.1366 Monitoring and inspection requirements.

* * * * *

(b) * * *

(8) * * *

(iv) Periods of time when monitoring measurements exceed the parameter values as well as periods of inadequate monitoring data do not constitute a violation if they occur during a startup, shutdown, or malfunction, and the facility operates in accordance with § 63.6(e).

* * * * *

32. Section 63.1367 is amended by revising the first sentence in paragraph (a)(3) introductory text to read as follows:

§ 63.1367 Recordkeeping requirements.

(a) * * *

(3) * * * The owner or operator of an affected source shall develop a written startup, shutdown, and malfunction plan as specified in § 63.6(e)(3). * * *

Subpart NNN—[Amended]

33. Section 63.1386 is amended by revising the first sentence in paragraph (c)(1) introductory text to read as follows:

§ 63.1386 Notification, recordkeeping, and reporting requirements.

(c) * * *

(1) The owner or operator shall develop a written plan as described in § 63.6(e)(3) that contains specific procedures to be followed for operating the source and maintaining the source during periods of startup, shutdown, and malfunction and a program of corrective action for malfunctioning process modifications and control systems used to comply with the standards. * * *

Subpart OOO—[Amended]

§ 63.1400 [Amended]

34. Section 63.1400 is amended by removing the third sentence in paragraph (k)(1) and the last sentence in paragraph (k)(2).

35. Section 63.1413 is amended by revising the first sentence in paragraph (h)(4) introductory text and paragraph (5) introductory text to read as follows:

§ 63.1413 Compliance demonstration procedures.

* * * * *

(h) * * *

(4) *Deviation from the emission standard.* If an affected source is not operated during periods of startup, shutdown, or malfunction in accordance with § 63.6(e), there has been a deviation from the emission standard. * * *

* * * * *

(5) *Situations that are not deviations.* If an affected source is operated during periods of startup, shutdown, or malfunction in accordance with § 63.6(e), and any of the situations listed in paragraphs (h)(5)(i) through (iv) of this section occur, such situations shall not be considered to be deviations.

* * * * *

36. Section 63.1416 is amended by:

a. Revising the first sentence in paragraph (b) introductory text; and

b. Revising paragraph (h)(2)(iv) to read as follows:

§ 63.1416 Recordkeeping requirements.

* * * * *

(b) * * * The owner or operator of an affected source shall develop a startup, shutdown, and malfunction plan as specified in § 63.6(e)(3) and shall keep the plan on-site. * * *

* * * * *

(h) * * *

(2) * * *

(iv) For purposes of paragraph (h)(2) of this section, a deviation means that the daily average, batch cycle daily average, or block average value of monitoring data for a parameter is greater than the maximum, or less than the minimum established value, except that the daily average, batch cycle daily average, or block average value during any startup, shutdown, or malfunction shall not be considered a deviation, if the owner or operator operates the source during such periods in accordance with § 63.6(e).

Subpart PPP—[Amended]

§ 63.1420 [Amended]

37. Section 63.1420 is amended by removing the third sentence in paragraph (h)(1).

38. Section 63.1439 is amended by:

a. Revising the first sentence in paragraph (b)(1) introductory text; and

b. Revising paragraph (h)(2)(iv)(A) to read as follows:

§ 63.1439 General recordkeeping and reporting provisions.

* * * * *

(b) * * *

(1) * * * The owner or operator of an affected source shall develop a written startup, shutdown, and malfunction plan as specified in § 63.6(e)(3). * * *

* * * * *

(h) * * *

(2) * * *

(iv) * * *

(A) The daily average value during any startup, shutdown, or malfunction shall not be considered an excursion for purposes of paragraph (h)(2) of this section, if the owner or operator operates the source during such periods in accordance with § 63.6(e).

* * * * *

Subpart QQQ—[Amended]

39. Section 63.1448 is amended by revising paragraph (c) to read as follows:

§ 63.1448 What are my general requirements for complying with this subpart?

* * * * *

(c) You must develop a written startup, shutdown, and malfunction plan according to the provisions in § 63.6(e)(3).

40. Section 63.1453 is amended by revising paragraph (c)(1)(ii) to read as follows:

§ 63.1453 How do I demonstrate continuous compliance with the emission limitations, work practice standards, and operation and maintenance requirements that apply to me?

* * * * *

(c) * * *

(1) * * *

(ii) Alarms that occur during startup, shutdown, or malfunction are not included in the calculation if the condition is described in the startup, shutdown, and malfunction plan, and you operated the source during such periods in accordance with § 63.6(e).

* * * * *

Subpart RRR—[Amended]

41. Section 63.1516 is amended by revising the first sentence in paragraph (a) introductory text as follows:

§ 63.1516 Reports.

(a) * * * The owner or operator must develop a written plan as described in § 63.6(e)(3) that contains specific procedures to be followed for operating and maintaining the source during periods of startup, shutdown, and malfunction, and a program of corrective action for malfunctioning process and air pollution control equipment used to comply with the standard. * * *

* * * * *

Subpart TTT—[Amended]

42. Section 63.1547 is amended by revising paragraph (g)(2) to read as follows:

§ 63.1547 Monitoring requirements.

* * * * *

(g) * * *

(2) Alarms that occur during startup, shutdown, or malfunction shall not be included in the calculation if the condition is described in the startup, shutdown, and malfunction plan and the owner or operator operates the source during such periods in accordance with § 63.6(e).

* * * * *

Subpart UUU—[Amended]

43. Section 63.1570 is amended by:

a. Revising paragraph (d);

b. Removing and reserving paragraph (e); and

c. Revising the first sentence in paragraph (g) to read as follows:

§ 63.1570 What are my general requirements for complying with this subpart?

* * * * *

(d) You must develop a written startup, shutdown, and malfunction plan (SSMP) according to the provisions in § 63.6(e)(3).

(e) [Reserved]

* * * * *

(g) Consistent with §§ 63.6(e) and 63.7(e)(1), deviations that occur during a period of startup, shutdown, or malfunction are not violations if you demonstrate to the Administrator's satisfaction that you were operating in accordance with § 63.6(e). * * *

Subpart XXX—[Amended]

44. Section 63.1656 is amended by revising paragraph (e)(2)(ii) to read as follows:

§ 63.1656 Performance testing, test methods, and compliance demonstrations.

* * * * *

(e) * * *

(2) * * *

(ii) Do not include alarms that occur during startup, shutdown, and malfunction in the calculation if the condition is described in the startup, shutdown, and malfunction plan and the owner or operator operates the source during such periods in accordance with § 63.6(e).

* * * * *

Subpart AAAA—[Amended]

45. Section 63.1960 is amended by revising the fourth and sixth sentences to read as follows:

§ 63.1960 How is compliance determined?

* * * Finally, you must develop a written SSM plan according to the provisions in 40 CFR 63.6(e)(3). * * * Failure to write or maintain a copy of the SSM plan is a deviation from the requirements of this subpart.

46. Section 63.1965 is amended by revising paragraph (c) to read as follows:

§ 63.1965 What is a deviation?

* * * * *

(c) A deviation occurs when a SSM plan is not developed or maintained on site.

Subpart CCCC—[Amended]

47. Section 63.2150 is amended by revising the first sentence in paragraph (c) to read as follows:

§ 63.2150 What are my general requirements for complying with this subpart?

* * * * *

(c) You must develop a written malfunction plan. * * *

48. Section 63.2164 is amended by revising paragraph (a) to read as follows:

§ 63.2164 If I monitor brew ethanol, what are my monitoring installation, operation, and maintenance requirements?

(a) Each CEMS must be installed, operated, and maintained according to manufacturer's specifications and in accordance with § 63.6(e).

* * * * *

§ 63.2171 [Amended]

49. Section 63.2171 is amended by removing paragraph (d).

Subpart DDDD—[Amended]

50. Section 63.2250 is amended by revising paragraph (c) to read as follows:

§ 63.2250 What are the general requirements?

* * * * *

(c) You must develop a written SSMP according to the provisions in § 63.6(e)(3).

* * * * *

51. Section 63.2271 is amended by removing and reserving paragraph (b)(1) and revising the first sentence in paragraph (b)(2) to read as follows:

§ 63.2271 How do I demonstrate continuous compliance with the compliance options, operating requirements, and work practice requirements?

* * * * *

(b) * * *

(1) [Reserved]

(2) Consistent with §§ 63.6(e) and 63.7(e)(1), deviations that occur during a period of startup, shutdown, or malfunction are not violations if you demonstrate to the EPA Administrator's satisfaction that you were operating in accordance with § 63.6(e). * * *

* * * * *

Subpart EEEE—[Amended]

52. Section 63.2350 is amended by revising paragraph (c) to read as follows:

§ 63.2350 What are my general requirements for complying with this subpart?

* * * * *

(c) You must develop a written startup, shutdown, and malfunction (SSM) plan according to the provisions in § 63.6(e)(3).

§ 63.2378 [Amended]

53. Section 63.2378 is amended by removing the third sentence of paragraph (b)(1).

54. Table 12 to subpart EEEE is amended by revising the citation to § 63.8(c)(1)(i)–(iii) to read as follows:

TABLE 12 TO SUBPART EEEE OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART EEEE

[As stated in §§ 63.2382 and 63.2398, you must comply with the applicable General Provisions requirements as follows:]

Citation	Subject	Brief description	Applies to subpart EEEE
*	*	*	*
§ 63.8(c)(1)(i)–(iii)	Routine and Predictable SSM	Keep parts for routine repairs readily available; reporting requirements for SSM when action is described in SSM plan.	Yes.
*	*	*	*

Subpart GGGG—[Amended]

55. Table 1 to § 63.2850 is amended by revising the paragraph (a) entries to read as follows:

§ 63.2850 How do I comply with the hazardous air pollutant emission standards?

* * * * *

TABLE 1 TO § 63.2850.—REQUIREMENTS FOR COMPLIANCE WITH HAP EMISSION STANDARDS

Are you required to * * *	For periods of normal operation?	For initial startup periods subject to § 63.2850(c)(2) or to (d)(2)?	For malfunction periods subject to § 63.2850(e)(2)?
(a) Operate and maintain your source in accordance with general duty provisions of § 63.6(e)?	Yes. Additionally, the HAP emission limits will apply.	Yes, you are required to minimize emissions to the extent practicable throughout the initial startup period. Such measures should be described in the SSM plan.	Yes, you are required to minimize emissions to the extent practicable throughout the initial startup period. Such measures should be described in the SSM plan.
* *	*	* *	* *

* * * * *

56. Section 63.2852 is amended by revising the first sentence to read as follows:

§ 63.2852 What is a startup, shutdown, and malfunction plan?

You must develop a written SSM plan in accordance with § 63.6(e)(3). * * *

57. In § 63.2870 Table 1 is amended by revising the entry for ''§ 63.6(e)(1) through (e)(3)(ii) and § 63.6(e)(3)(v) through (vii),'' by removing the entry for ''§ 63.6(e)(3)(v)(iii)'' and adding in its place ''§ 63.6(e)(3)(iii)'' to read as follows:

§ 63.2870 What parts of the General Provisions apply to me?

* * * * *

TABLE 1 TO § 63.2870.—APPLICABILITY OF 40 CFR PART 63, SUBPART A, TO 40 CFR, PART 63, SUBPART GGGG

General provisions citation	Subject of citation	Brief description of requirement	Applies to subpart	Explanation
* *	*	*	*	* *
§ 63.6(e)(1) through (e)(3)(ii) and § 63.6(e)(3)(v) through (vii).	Operation and maintenance requirements.	.....	Yes	Minimize emissions to the extent practical.
§ 63.6(e)(3)(iii)	Operation and maintenance requirements.	.....	No	Minimize emissions to the extent practical.
* *	*	*	*	* *

58. Section 63.2872(c) is amended by:

a. Revising the second sentence in the definition of *initial startup period*; and

b. Revising the third sentence in the definition of *malfunction period* to read as follows:

§ 63.2872 What definitions apply to this subpart?

* * * * *

(c) * * *

Initial startup period means * * * During an initial startup period, a source complies with the standards by minimizing HAP emissions to the extent practical. * * *

* * * * *

Malfunction period means * * * During a malfunction period, a source complies with the standards by minimizing HAP emissions to the extent practical. * * *

* * * * *

Subpart HHHH—[Amended]

59. Section 63.2984 is amended by revising paragraph (b) to read as follows:

§ 63.2984 What operating limits must I meet?

* * * * *

(b) When during a period of normal operations you detect that an operating parameter deviates from the limit or range established in paragraph (a) of this section, you must initiate corrective actions within 1 hour according to the provisions of your OMM plan. The corrective actions must be completed in an expeditious manner as specified in the OMM plan.

* * * * *

60. Section 63.2986 is amended by revising the first sentence in paragraph (g)(3) to read as follows:

§ 63.2986 How do I comply with the standards?

* * * * *

(g) * * *

(3) You must develop a written SSMP according to the provisions in § 63.6(e)(3). * * *

Subpart IIII—[Amended]

61. Section 63.3100 is amended by revising the first sentence in paragraph (f) to read as follows:

§ 63.3100 What are my general requirements for complying with this subpart?

* * * * *

(f) If your affected source uses emission capture systems and add-on control devices, you must develop a written startup, shutdown, and malfunction plan (SSMP) according to the provisions in § 63.6(e)(3). * * *

62. Section 63.3163 is amended by:

a. Removing and reserving paragraph (g); and

b. Revising the first sentence in paragraph (h) to read as follows:

§ 63.3163 How do I demonstrate continuous compliance with the emission limitations?

* * * * *

(g) [Reserved]

(h) Consistent with §§ 63.6(e) and 63.7(e)(1), deviations that occur during a period of startup, shutdown, or malfunction of the emission capture system, add-on control device, or coating operation that may affect emission capture or control device efficiency are not violations if you demonstrate to the Administrator's satisfaction that you were operating in accordance with § 63.6(e). * * *

* * * * *

Subpart KKKK—[Amended]

63. Section 63.3500 is amended by revising the first sentence in paragraph (c) to read as follows:

§ 63.3500 What are my general requirements for complying with this subpart?

* * * * *

(c) If your affected source uses an emission capture system and add-on control device for purposes of complying with this subpart, you must develop a written startup, shutdown, and malfunction plan (SSMP) according to the provisions in § 63.6(e)(3). * * *

64. Section 63.3542 is amended by:

a. Removing and reserving paragraph (g); and

b. Revising the first sentence in paragraph (h) to read as follows:

§ 63.3542 How do I demonstrate continuous compliance with the emission limitations?

* * * * *

(g) [Reserved]

(h) Consistent with §§ 63.6(e) and 63.7(e)(1), deviations that occur during a period of startup, shutdown, or malfunction of the emission capture system, add-on control device, or coating operation that may affect emission capture or control device efficiency are not violations if you demonstrate to the Administrator's satisfaction that you were operating in accordance with § 63.6(e). * * *

* * * * *

65. Section 63.3552 is amended by:

a. Removing and reserving paragraph (f); and

b. Revising the first sentence in paragraph (g) to read as follows:

§ 63.3552 How do I demonstrate continuous compliance with the emission limitations?

* * * * *

(f) [Reserved]

(g) Consistent with §§ 63.6(e) and 63.7(e)(1), deviations that occur during a period of startup, shutdown, or malfunction of the emission capture system, add-on control device, or coating operation that may affect emission capture or control device efficiency are not violations if you demonstrate to the Administrator's satisfaction that you were operating in accordance with § 63.6(e). * * *

* * * * *

Subpart MMMM—[Amended]

66. Section 63.3900 is amended by revising the first sentence in paragraph (c) to read as follows:

§ 63.3900 What are my general requirements for complying with this subpart?

* * * * *

(c) If your affected source uses an emission capture system and add-on control device, you must develop a written startup, shutdown, and malfunction plan according to the provisions in § 63.6(e)(3). * * *

§ 63.3963 [Amended]

67. Section 63.3963 is amended by removing and reserving paragraph (g).

Subpart NNNN—[Amended]

68. Section 63.4100 is amended by revising the first sentence in paragraph (d) to read as follows:

§ 63.4100 What are my general requirements for complying with this subpart?

* * * * *

(d) If your affected source uses an emission capture system and add-on control device, you must develop a written startup, shutdown, and malfunction plan according to the provisions in § 63.6(e)(3). * * *

69. Section 63.4110 is amended by revising paragraph (b)(9)(v) to read as follows:

§ 63.4110 What notifications must I submit?

* * * * *

(b) * * *

(9) * * *

(v) A statement of whether or not you developed the startup, shutdown, and malfunction plan required by § 63.4100(d).

* * * * *

70. Section 63.4163 is amended by:

a. Removing and reserving paragraph (g); and

b. Revising the first sentence in paragraph (h) to read as follows:

§ 63.4163 How do I demonstrate continuous compliance with the emission limitations?

* * * * *

(g) [Reserved]

(h) Consistent with §§ 63.6(e) and 63.7(e)(1), deviations that occur during a period of startup, shutdown, or malfunction of the emission capture system, add-on control device, or coating operation that may affect emission capture or control device efficiency are not violations if you demonstrate to the Administrator's satisfaction that you were operating in accordance with § 63.6(e). * * *

* * * * *

Subpart OOOO—[Amended]

71. Section 63.4300 is amended by:

a. Revising paragraph (a)(3)(i); and

b. Revising the first sentence in paragraph (c) to read as follows:

§ 63.4300 What are my general requirements for complying with this subpart?

(a) * * *

(3) * * *

(i) The web coating/printing or dyeing/finishing operation(s) must be in compliance with the applicable emission limit in Table 1 to this subpart or minimize emissions at all times as required by § 63.6(e).

* * * * *

(c) If your affected source uses an emission capture system and add-on control device, you must develop a written startup, shutdown, and malfunction plan according to the provisions in § 63.6(e)(3). * * *

72. Section 63.4310 is amended by revising paragraph (c)(9)(iv) to read as follows:

§ 63.4310 What notifications must I submit?

* * * * *

(c) * * *

(9) * * *

(iv) A statement of whether or not you developed and implemented the work practice plan required by § 63.4293 and developed the startup, shutdown, and malfunction plan required by § 63.4300.

73. Section 63.4342 is amended by:

a. Removing and reserving paragraph (g); and

b. Revising the first sentence in paragraph (h) to read as follows:

§ 63.4342 How do I demonstrate continuous compliance with the emission limitations?

* * * * *

(g) [Reserved]

(h) Consistent with §§ 63.6(e) and 63.7(e)(1), deviations that occur during a period of startup, shutdown, or malfunction of the emission capture system, add-on control device, or web coating/printing or dyeing/finishing operation that may affect emission capture or control device efficiency are not violations if you demonstrate to the Administrator's satisfaction that you were operating in accordance with § 63.6(e). * * *

* * * * *

74. Section 63.4352 is amended by:

a. Removing and reserving paragraph (g); and

b. Revising the first sentence in paragraph (h) to read as follows:

§ 63.4352 How do I demonstrate continuous compliance with the emission limitations?

* * * * *

(g) [Reserved]

(h) Consistent with §§ 63.6(e) and 63.7(e)(1), deviations that occur during

a period of startup, shutdown, or malfunction of the emission capture system, add-on control device, or web coating/printing operation that may affect emission capture or control device efficiency are not violations if you demonstrate to the Administrator's satisfaction that you were operating in accordance with § 63.6(e). * * *

* * * * *

Subpart PPPP—[Amended]

75. Section 63.4500 is amended by revising the first sentence in paragraph (c) to read as follows:

§ 63.4500 What are my general requirements for complying with this subpart?

* * * * *

(c) If your affected source uses an emission capture system and add-on control device, you must develop a written startup, shutdown, and malfunction plan according to the provisions in § 63.6(e)(3). * * *

§ 63.4563 [Amended]

76. Section 63.4563 is amended by removing and reserving paragraph (g).

Subpart QQQQ—[Amended]

77. Section 63.4700 is amended by revising the first sentence in paragraph (d) to read as follows:

§ 63.4700 What are my general requirements for complying with this subpart?

* * * * *

(d) If your affected source uses an emission capture system and add-on control device, you must develop a written startup, shutdown, and malfunction plan (SSMP) according to the provisions in § 63.6(e)(3). * * *

78. Section 63.4763 is amended by:

a. Removing and reserving paragraph (g); and

b. Revising the first sentence in paragraph (h) to read as follows:

§ 63.4763 How do I demonstrate continuous compliance with the emission limitations?

* * * * *

(g) [Reserved]

(h) Consistent with §§ 63.6(e) and 63.7(e)(1), deviations that occur during a period of SSM of the emission capture system, add-on control device, or coating operation that may affect emission capture or control device efficiency are not violations if you demonstrate to the Administrator's satisfaction that you were operating in accordance with § 63.6(e). * * *

* * * * *

Subpart RRRR—[Amended]

79. Section 63.4900 is amended by revising the first sentence in paragraph (c) to read as follows:

§ 63.4900 What are my general requirements for complying with this subpart?

* * * * *

(c) If your affected source uses an emission capture system and add-on control device to comply with the emission limitations in § 63.4890, you must develop a written startup, shutdown, and malfunction plan (SSMP) according to the provisions in § 63.6(e)(3). * * *

§ 63.4962 [Amended]

80. Section 63.4962 is amended by removing and reserving paragraph (g).

Subpart UUUU—[Amended]

81. Section 63.5515 is amended by revising paragraph (c) to read as follows:

§ 63.5515 What are my general requirements for complying with this subpart?

* * * * *

(c) You must develop a written startup, shutdown, and malfunction (SSM) plan according to the provisions in § 63.6(e)(3).

* * * * *

82. Section 63.5555 is amended by:

a. Removing and reserving paragraph (c); and

b. Revising paragragh (d) to read as follows:

§ 63.5555 How do I demonstrate continuous compliance with the emission limits, operating limits, and work practice standards?

* * * * *

(c) [Reserved]

(d) Consistent with §§ 63.6(e) and 63.7(e)(1), deviations that occur during a period of startup, shutdown, or malfunction are not violations if you demonstrate to the Administrator's satisfaction that you were operating according to § 63.6(e). The Administrator will determine whether deviations that occur during a period you identify as a startup, shutdown, or malfunction are violations, according to the provisions in § 63.6(e).

83. Table 10 to subpart UUUU of part 63 is amended by revising the citation to § 63.8(c)(1)(i) to read as follows:

TABLE 10 TO SUBPART UUUU OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART UUUU

[As required in §§ 63.5515(h) and 63.5600, you must comply with the appropriate General Provisions requirements specified in the following table]

Citation	Subject	Brief description	Applies to subpart UUUU
*	*	*	*
§ 63.8(c)(1)(i)	Routine and Predictable SSM	Keep parts for routine repairs readily available; reporting requirements for SSM when action is described in SSM plan.	Yes.
*	*	*	*

Subpart WWWW—[Amended]

84. Section 63.5835 is amended by revising paragraph (d) to read as follows:

§ 63.5835 What are my general requirements for complying with this subpart?

* * * * *

(d) You must develop a written startup, shutdown, and malfunction plan according to the provisions in § 63.6(e)(3) for any organic HAP emissions limits you meet using an add-on control.

85. Section 63.5900 is amended by:

a. Revising paragraph (d); and

b. Revising the first sentence in paragraph (e) to read as follows:

§ 63.5900 How do I demonstrate continuous compliance with the standards?

* * * * *

(d) When you use an add-on control device to meet standards in § 63.5805, you are not required to meet those standards during periods of startup, shutdown, or malfunction, but you must operate your affected source to minimize emissions in accordance with § 63.6(e)(1)(i).

(e) Consistent with §§ 63.6(e) and 63.7(e)(1), deviations that occur during a period of malfunction for those affected sources and standards specified in paragraph (d) of this section are not violations if you demonstrate to the Administrator's satisfaction that you were operating in accordance with § 63.6(e). * * *

Subpart XXXX—[Amended]

86. Section 63.5990 is amended by revising paragraph (d) to read as follows:

§ 63.5990 What are my general requirements for complying with this subpart?

* * * * *

(d) For each affected source that complies with the emission limits in Tables 1 through 3 to this subpart using a control device, you must develop a written startup, shutdown, and malfunction plan according to the provisions in § 63.6(e)(3).

* * * * *

Subpart YYYY—[Amended]

87. Section 63.6140 is amended by revising paragraph (c) to read as follows:

§ 63.6140 How do I demonstrate continuous compliance with the emission and operating limitations?

* * * * *

(c) Consistent with §§ 63.6(e) and 63.7(e)(1), deviations that occur during a period of startup, shutdown, and malfunction are not violations if you have operated your stationary combustion turbine in full conformity with the general duty to minimize emissions established by § 63.6(e)(1)(i).

88. Section 63.6175 is amended by revising paragraph (4) under the definition of *deviation* to read as follows:

§ 63.6175 What definitions apply to this subpart?

* * * * *

Deviation means * * *

(4) Fails to satisfy the general duty to minimize emissions established by § 63.6(e)(1)(i).

* * * * *

Subpart ZZZZ—[Amended]

89. Section 63.6640 is amended by:

a. Removing and reserving paragraph (c); and

b. Revising the first sentence in paragraph (d) to read as follows:

§ 63.6640 How do I demonstrate continuous compliance with the emission limitations and operating limitations?

* * * * *

(c) [Reserved]

(d) Consistent with §§ 63.6(e) and 63.7(e)(1), deviations from the emission or operating limitations that occur during a period of startup, shutdown, or malfunction are not violations if you demonstrate to the Administrator's satisfaction that you were operating in accordance with § 63.6(e). * * *

* * * * *

90. Section 63.6675 is amended by revising paragraph (4) under the definition of *deviation* to read as follows:

§ 63.6675 What definitions apply to this subpart?

* * * * *

Deviation means * * *

(4) Fails to satisfy the general duty to minimize emissions established by § 63.6(e)(1)(i).

* * * * *

Subpart AAAAA—[Amended]

91. Section 63.7100 is amended by revising paragraph (e) to read as follows:

§ 63.7100 What are my general requirements for complying with this subpart?

* * * * *

(e) You must develop a written startup, shutdown, and malfunction plan (SSMP) according to the provisions in § 63.6(e)(3).

92. Section 63.7121 is amended by:

a. Removing and reserving paragraph (c); and

b. Revising the first sentence in paragraph (d) to read as follows:

§ 63.7121 How do I demonstrate continuous compliance with the emission limitations standard?

* * * * *

(c) [Reserved]

(d) Consistent with §§ 63.6(e) and 63.7(e)(1), deviations that occur during a period of startup, shutdown, or malfunction are not violations if you demonstrate to the Administrator's satisfaction that you were operating in accordance with § 63.6(e). * * *

* * * * *

Subpart BBBBB—[Amended]

93. Section 63.7185 is amended by revising the first sentence in paragraph (c) to read as follows:

§ 63.7185 What are my general requirements for complying with this subpart?

* * * * *

(c) You must develop a written startup, shutdown, and malfunction plan (SSMP). * * *

* * * * *

§ 63.7187 [Amended]

94. Section 63.7187 is amended by removing and reserving paragraph (d).

Subpart CCCCC—[Amended]

95. Section 63.7310 is amended by revising paragraph (c) to read as follows:

§ 63.7310 What are my general requirements for complying with this subpart?

* * * * *

(c) You must develop a written startup, shutdown, and malfunction plan according to the provisions in § 63.6(e)(3).

96. Section 63.7336 is amended by removing introductory text in paragraph (b) and revising paragraph (b)(1) to read as follows:

§ 63.7336 What other requirements must I meet to demonstrate continuous compliance?

* * * * *

(b) *Startup, shutdowns, and malfunctions.* (1) Consistent with §§ 63.6(e) and 63.7(e)(1), deviations that occur during a period of startup, shutdown, or malfunction are not violations if you demonstrate to the Administrator's satisfaction that you were operating in accordance with § 63.6(e).

* * * * *

Subpart DDDDD—[Amended]

97. Section 63.7505 is amended by revising paragraph (e) to read as follows:

§ 63.7505 What are my general requirements for complying with this subpart?

* * * * *

(e) If you have an applicable emission limit or work practice standard, you must develop a written startup, shutdown, and malfunction plan (SSMP) according to the provisions in § 63.6(e)(3).

98. Section 63.7540 is amended by:

a. Revising the first sentence in paragraph (a)(9);

b. Removing and reserving paragraph (c); and

c. Revising the first sentence in paragraph (d) to read as follows:

§ 63.7540 How do I demonstrate continuous compliance with the emission limits and work practice standards?

(a) * * *

(9) If your unit is controlled with a fabric filter, and you demonstrate continuous compliance using a bag leak detection system, you must initiate corrective action within 1 hour of a bag leak detection system alarm and complete corrective actions as soon as practical, and operate and maintain the fabric filter system such that the alarm does not sound more than 5 percent of the operating time during a 6-month period. * * *

* * * * *

(c) [Reserved]

(d) Consistent with §§ 63.6(e) and 63.7(e)(1), deviations that occur during a period of startup, shutdown, or malfunction are not violations if you demonstrate to the EPA Administrator's satisfaction that you were operating in accordance with § 63.6(e). * * *

99. Table 10 to subpart DDDDD of part 63 is amended by revising the citation to § 63.8(c)(1)(iii) to read as follows:

TABLE 10 TO SUBPART DDDDD OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART DDDDD

[As stated in § 63.7565, you must comply with the applicable General Provisions according to the following]

Citation	Subject	Brief description	Applicable
*	*	*	*
§ 63.8(c)(1)(iii)	Compliance with Operation and Maintenance.	Must develop an SSMP for CMS	Yes.
*	*	*	*

Subpart EEEEE—[Amended]

100. Section 63.7720 is amended by revising the first sentence in paragraph (c) to read as follows:

§ 63.7720 What are my general requirements for complying with this subpart?

* * * * *

(c) You must develop a written startup, shutdown, and malfunction plan according to the provisions in § 63.6(e)(3). * * *

101. Section 63.7746 is amended by removing introductory text in paragraph (b) and revising paragraph (b)(1) to read as follows:

§ 63.7746 What other requirements must I meet to demonstrate continuous compliance?

* * * * *

(b) Startups, shutdowns, and malfunctions. (1) Consistent with the requirements of §§ 63.6(e) and 63.7(e)(1), deviations that occur during a period of startup, shutdown, or malfunction are not violations if you demonstrate to the Administrator's satisfaction that you were operating in accordance with § 63.6(e).

* * * * *

Subpart FFFFF—[Amended]

102. Section 63.7810 is amended by revising paragraph (c) to read as follows:

§ 63.7810 What are my general requirements for complying with this subpart?

* * * * *

(c) You must develop a written startup, shutdown, and malfunction plan according to the provisions in § 63.6(e)(3).

103. Section 63.7835 is amended by removing introductory text to paragraph (b) and revising paragraph (b)(1) to read as follows:

§ 63.7835 What other requirements must I meet to demonstrate continuous compliance?

* * * * *

(b) *Startups, shutdowns, and malfunctions.* (1) Consistent with §§ 63.6(e) and 63.7(e)(1), deviations that occur during a period of startup, shutdown, or malfunction are not violations if you demonstrate to the Administrator's satisfaction that you were operating in accordance with § 63.6(e).

* * * * *

Subpart GGGGG—[Amended]

104. Section 63.7935 is amended by:

a. Revising paragraph (c);

b. Removing and reserving paragraph (d); and

c. Revising the first sentence in paragraph (f) to read as follows:

§ 63.7935 What are my general requirements for complying with this subpart?

* * * * *

(c) You must develop a written startup, shutdown, and malfunction plan (SSMP) according to the provisions in § 63.6(e)(3).

(d) [Reserved]

* * * * *

(f) Consistent with §§ 63.6(e) and 63.7(e)(1), deviations that occur during a period of startup, shutdown, or malfunction are not violations if you demonstrate to the Administrator's satisfaction that you were operating according to § 63.6(e). * * *

* * * * *

Subpart IIIII—[Amended]

105. Section 63.8226 is amended by revising paragraph (b) to read as follows:

§ 63.8226 What are my general requirements for complying with this subpart?

* * * * *

(b) You must develop a written startup, shutdown, and malfunction plan (SSMP) according to the provisions in § 63.6(e)(3).

106. Section 63.8248 is amended by removing introductory text in paragraph (b) and revising paragraph (b)(1) to read as follows:

§ 63.8248 What other requirements must I meet?

* * * * *

(b) *Startups, shutdowns, and malfunctions.* (1) Consistent with §§ 63.6(e) and 63.7(e)(1), deviations that occur during a period of startup, shutdown, or malfunction are not violations if you demonstrate to the Administrator's satisfaction that you were operating according to the requirements of § 63.6(e).

* * * * *

Subpart JJJJJ—[Amended]

107. Section 63.8420 is amended by revising paragraph (c) to read as follows:

§ 63.8420 What are my general requirements for complying with this subpart?

* * * * *

(c) You must develop a written startup, shutdown, and malfunction plan (SSMP) according to the provisions in § 63.6(e)(3).

* * * * *

108. Section 63.8470 is amended by:

a. Removing and reserving paragraph (d); and

b. Revising the first sentence in paragraph (e) to read as follows:

§ 63.8470 How do I demonstrate continuous compliance with the emission limitations?

* * * * *

(d) [Reserved]

(e) Consistent with §§ 63.6(e) and 63.7(e)(1), deviations that occur during a period of startup, shutdown, or malfunction are not violations if you demonstrate to the Administrator's satisfaction that you were operating according to the requirements of § 63.6(e) and your OM&M plan. * * *

* * * * *

Subpart KKKKK—[Amended]

109. Section 63.8570 is amended by revising paragraph (c) to read as follows:

§ 63.8570 What are my general requirements for complying with this subpart?

* * * * *

(c) For each kiln that is subject to the emission limits specified in Table 1 to this subpart, you must develop a written startup, shutdown, and malfunction plan (SSMP) according to the provisions in § 63.6(e)(3).

* * * * *

110. Section 63.8620 is amended by:

a. Removing and reserving paragraph (d); and

b. Revising the first sentence in paragraph (e) to read as follows:

§ 63.8620 How do I demonstrate continuous compliance with the emission limitations and work practice standards?

* * * * *

(d) [Reserved]

(e) Consistent with §§ 63.6(e) and 63.7(e)(1), deviations that occur during a period of startup, shutdown, or malfunction are not violations if you demonstrate to the Administrator's satisfaction that you were operating according to the requirements of § 63.6(e) and your OM&M plan. * * *

* * * * *

Subpart LLLLL—[Amended]

111. Section 63.8685 is amended by revising paragraph (c) to read as follows:

§ 63.8685 What are my general requirements for complying with this subpart?

* * * * *

(c) You must develop a written startup, shutdown, and malfunction plan (SSMP) according to the provisions in § 63.6(e)(3).

* * * * *

112. Section 63.8691 is amended by:

a. Removing and reserving paragraph (c); and

b. Revising the first sentence in paragraph (d) to read as follows:

§ 63.8691 How do I demonstrate continuous compliance with the operating limits?

* * * * *

(c) [Reserved]

(d) Consistent with §§ 63.6(e) and 63.7(e)(1), deviations that occur during a period of startup, shutdown, or malfunction are not violations if you demonstrate to the Administrator's satisfaction that you were operating in accordance with § 63.6(e). * * *

113. Table 7 to subpart LLLLL of part 63 is amended by revising the citation to § 63.8(c)(1)(i) to read as follows:

TABLE 7 TO SUBPART LLLLL OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART LLLLL

Citation	Subject	Brief description	Applicable
*	*	*	*
§ 63.8(c)(1)(i)	Routine and predictable CMS malfunction	1. Keep parts for routine repairs readily available. 2. Reporting requirements for CMS malfunction when action is described in SSM plan.	Yes.
*	*	*	*

Subpart MMMMM—[Amended]

114. Section 63.8794 is amended by revising paragraph (e) to read as follows:

§ 63.8794 What are my general requirements for complying with this subpart?

* * * * *

(e) For each new or reconstructed flame lamination affected source, you must develop a written startup, shutdown, and malfunction plan according to the provisions in § 63.6(e)(3).

* * * * *

115. Section 63.8812 is amended by:

a. Removing and reserving paragraph (c); and

b. Revising the first sentence in paragraph (d) to read as follows:

§ 63.8812 How do I demonstrate continuous compliance with the emission limitations?

* * * * *

(c) [Reserved]

(d) Consistent with §§ 63.6(e) and 63.7(e)(1), deviations that occur at a new or reconstructed flame lamination affected source during a period of startup, shutdown, or malfunction are not violations if you demonstrate to the Administrator's satisfaction that you were operating in accordance with § 63.6(e). * * *

* * * * *

Subpart NNNNN—[Amended]

116. Section 63.9005 is amended by revising paragraph (c) to read as follows:

§ 63.9005 What are my general requirements for complying with this subpart?

* * * * *

(c) You must develop a written startup, shutdown, and malfunction plan according to the provisions in § 63.6(e)(3).

* * * * *

117. Section 63.9040 is amended by:

a. Removing and reserving paragraph (d); and

b. Revising the first sentence in paragraph (e) to read as follows:

§ 63.9040 How do I demonstrate continuous compliance with the emission limitations and work practice standards?

* * * * *

(d) [Reserved]

(e) Consistent with §§ 63.6(e) and 63.7(e)(1), deviations that occur during a period of startup, shutdown, or malfunction are not violations if you demonstrate to the Administrator's satisfaction that you were operating in accordance with § 63.6(e). * * *

Subpart PPPPP—[Amended]

118. Section 63.9305 is amended by revising the first sentence in paragraph (c) to read as follows:

§ 63.9305 What are my general requirements for complying with this subpart?

* * * * *

(c) You must develop a written SSM plan (SSMP) for emission control devices and associated monitoring equipment according to the provisions in § 63.6(e)(3). * * *

119. Section 63.9340 is amended by removing introductory text in paragraph (c) and revising paragraph (c)(1) to read as follows:

§ 63.9340 How do I demonstrate continuous compliance with the emission limitations?

* * * * *

(c) *Startups, shutdowns, and malfunctions.* (1) Consistent with §§ 63.6(e) and 63.7(e)(1), deviations that occur during a period of SSM of control devices and associated monitoring equipment are not violations if you demonstrate to the Administrator's satisfaction that you were operating in accordance with § 63.6(e).

* * * * *

120. Table 7 to subpart PPPPP of part 63 is amended by revising the citation to § 63.8(c)(1)(i) to read as follows:

TABLE 7 TO SUBPART PPPPP OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART PPPPP

[As stated in § 63.9365, you must comply with the General Provisions in §§ 63.1 through 63.15 that apply to you according to the following table]

Citation	Subject	Brief description	Applicable
*	*	*	*
§ 63.8(c)(1)(i)	Routine and predictable CMS malfunctions.	1. Keep parts for routine repairs of CMS readily available. 2. Reporting requirements for SSM when action is described in SSMP.	Yes.
*	*	*	*

Subpart QQQQQ—[Amended]

121. Section 63.9505 is amended by revising paragraph (c) to read as follows:

§ 63.9505 What are my general requirements for complying with this subpart?

* * * * *

(c) You must develop a written startup, shutdown, and malfunction plan according to the provisions in § 63.6(e)(3).

122. Section 63.9530 is amended by:

a. Removing and reserving paragraph (d); and

b. Revising the first sentence in paragraph (e) to read as follows:

§ 63.9530 How do I demonstrate continuous compliance with the emission limitation that applies to me?

* * * * *

(d) [Reserved]

(e) Consistent with §§ 63.6(e) and 63.7(e)(1), deviations that occur during a period of startup, shutdown, or malfunction are not violations if you demonstrate to the Administrator's satisfaction that you were operating in accordance with § 63.6(e). * * *

Subpart RRRRR—[Amended]

123. Section 63.9610 is amended by revising paragraph (c) to read as follows:

§ 63.9610 What are my general requirements for complying with this subpart?

* * * * *

(c) You must develop a written startup, shutdown, and malfunction plan according to the provisions in § 63.6(e)(3).

124. Section 63.9637 is amended by removing introductory text in paragraph (b) and revising paragraph (b)(1) to read as follows:

§ 63.9637 What other requirements must I meet to demonstrate continuous compliance?

* * * * *

(b) *Startups, shutdowns, and malfunctions.* (1) Consistent with §§ 63.6(e) and 63.7(e)(1), deviations that occur during a period of startup, shutdown, or malfunction are not violations if you demonstrate to the Administrator's satisfaction that you were operating in accordance with § 63.6(e).

* * * * *

Subpart SSSSS—[Amended]

125. Section 63.9792 is amended by revising paragraph (c) to read as follows:

§ 63.9792 What are my general requirements for complying with this subpart?

* * * * *

(c) You must develop a written startup, shutdown, and malfunction plan (SSMP) according to the provisions in § 63.6(e)(3).

* * * * *

126. Section 63.9810 is amended by removing and reserving paragraph (e)(1) and revising the first sentence in paragraph (e)(2) to read as follows:

§ 63.9810 How do I demonstrate continuous compliance with the emission limits, operating limits, and work practice standards?

* * * * *

(e) * * *

(1) [Reserved]

(2) Consistent with §§ 63.6(e) and 63.7(e)(1), deviations that occur during a period of startup, shutdown, or malfunction are not violations if you demonstrate to the Administrator's satisfaction that you were operating according to § 63.6(e) and your OM&M plan. * * *

Subpart TTTTT—[Amended]

127. Section 63.9910 is amended by revising paragraph (b) to read as follows:

§ 63.9910 What are my general requirements for complying with this subpart?

* * * * *

(b) You must develop a written startup, shutdown, and malfunction

plan according to the provisions in § 63.6(e)(3).

128. Section 63.9925 is amended by removing introductory text in paragraph (b) and revising paragraph (b)(1) to read as follows:

§ 63.9925 What other requirements must I meet to demonstrate continuous compliance?

* * * * *

(b) *Startups, shutdowns, and malfunctions.* (1) Consistent with §§ 63.6(e) and 63.7(e)(1), deviations that occur during a period of startup, shutdown, or malfunction are not violations if you demonstrate to the Administrator's satisfaction that you were operating in accordance with § 63.6(e).

* * * * *

PART 65—[Amended]

129. The authority citation of part 65 continues to read as follows:

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

Subpart A—[Amended]

130. Section 65.3 is amended by

a. Revising the first sentence in paragraph (a)(4); and

b. Revising paragraph (b)(2)(i) to read as follows:

§ 65.3 Compliance with standards and operation and maintenance requirements.

(a) * * *

(4) Malfunctions shall be corrected as soon as practical after their occurrence. * * *

* * * * *

(b) * * *

(2) * * *

(i) During periods of startup, shutdown, or malfunction (and the source is operated during such periods in accordance with § 63.3(a)(3)), a monitoring parameter is outside its established range or monitoring data cannot be collected; or

* * * * *

131. Section 65.6 is amended by revising the first and fourth sentence in paragraph (b)(1) introductory text and revising paragraph (b)(2) to read as follows:

§ 65.6 Startup, shutdown, and malfunction plan and procedures.

* * * * *

(b) *Startup, shutdown, and malfunction plan (1) Description and purpose of plan.* The owner or operator of a regulated source shall develop a written startup, shutdown, and malfunction plan that describes, in detail, procedures for operating and maintaining the regulated source during periods of startup, shutdown, and malfunction and a program of corrective action for malfunctioning process and air pollution control equipment used to comply with the relevant standard. * * * The requirement to develop this plan shall be incorporated into the source's title V permit. * * *

* * * * *

(2) *Operation of source.* During periods of startup, shutdown, and malfunction, the owner or operator of a regulated source shall operate and maintain such source (including associated air pollution control equipment and CPMS) in accordance with § 65.3(a).

* * * * *

132. Section 65.156 is amended by revising paragraphs (d)(3)(i) and (ii) to read as follows:

§ 65.156 General monitoring requirements for control and recovery devices.

* * * * *

(d) * * *

(3) * * *

(i) Excursions which occur during periods of startup, shutdown, and malfunction, when the source is being operated during such periods to minimize emissions in accordance with § 65.3(a)(3).

(ii) Excursions which occur due to failure to collect a valid hour of data during periods of startup, shutdown, and malfunction, when the source is being operated during such periods in accordance with § 65.3(a)(3).

* * * * *

[FR Doc. 05–13497 Filed 7–28–05; 8:45 am]

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July 29, 2005

Part IV

Environmental Protection Agency

40 CFR Part 63

National Emission Standards for Hazardous Air Pollutants: Plywood and Composite Wood Products; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[OAR–2003–0048; FRL–7947–8]

RIN 2060–AM78

National Emission Standards for Hazardous Air Pollutants: Plywood and Composite Wood Products

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; amendments.

SUMMARY: On July 30, 2004, EPA promulgated national emission standards for hazardous air pollutants (NESHAP) for the plywood and composite wood products (PCWP) source category. Stakeholders expressed concern with some of the final rule requirements, including definitions; the emissions testing procedures required for facilities demonstrating eligibility for the low-risk subcategory; stack height calculations to be used in low-risk subcategory eligibility demonstrations; and permitting and timing issues associated with the low-risk subcategory eligibility demonstrations. In this action, EPA proposes amendments to the final PCWP NESHAP to address these issues and to correct any other inconsistencies that were discovered during the review process. This action also clarifies some common applicability questions. We are seeking comment on the provisions of the final PCWP rule outlined in this action. We are not requesting comments addressing other provisions of the final PCWP rule.

DATES: *Comments.* Comments must be received on or before September 12, 2005.

Public Hearing. If anyone contacts EPA requesting to speak at a public hearing by August 8, 2005, a public hearing will be held on August 15, 2005. For further information on the public hearing and requests to speak, see the **ADDRESSES** section of this preamble.

ADDRESSES: *Comments.* Submit your comments, identified by Docket ID No. OAR–2003–0048 (Legacy Docket ID No. A–98–44) by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- Agency Web site: *http://www.epa.gov/edocket.* EDOCKET, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.
- E-mail: *a-and-r-docket@epa.gov.*
- Fax: (202) 566–1741.
- Mail: Air and Radiation Docket and Information Center, EPA, Mailcode: 6102T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.
- Hand Delivery: Air and Radiation Docket and Information Center, EPA, Room B102, 1301 Constitution Avenue, NW., Washington, DC. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions. Direct your comments to Docket ID No. OAR–2003–0048 (Legacy Docket ID No. A–98–44). EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.epa.gov/edocket*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through EDOCKET, regulations.gov, or e-mail. EPA EDOCKET and the Federal regulations.gov websites are ''anonymous access'' systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through EDOCKET or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Public Hearing. If a public hearing is held, it will be held on August 15, 2005 at the EPA facility, Research Triangle Park, NC or an alternative site nearby. Persons interested in attending the hearing or wishing to present oral testimony should notify Ms. Mary Tom Kissell at least 2 days in advance of the public hearing (see **FOR FURTHER INFORMATION CONTACT** section of this preamble). The public hearing will provide interested parties the opportunity to present data, views, or arguments concerning this proposed rule.

Docket. EPA has established an official public docket for today's proposed amendments, including both Docket ID No. OAR–2003–0048 and Legacy Docket ID No. A–98–44. The official public docket consists of the documents specifically referenced in today's proposed amendments, any public comments received, and other information related to the proposed amendments. All items may not be listed under both docket numbers, so interested parties should inspect both docket numbers to ensure that they have received all materials relevant to today's proposed amendments. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Air and Radiation Docket and Information Center, EPA, Room B102, 1301 Constitution Avenue, NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket and Information Center is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: For general and technical information, and questions about the public hearing, contact Ms. Mary Tom Kissell, Waste and Chemical Processes Group, Emission Standards Division, Mailcode: C439–03, EPA, Research Triangle Park, NC 27711; telephone number: (919) 541–4516; fax number: (919) 541–0246; e-mail address: *kissell.mary@epa.gov*.

SUPPLEMENTARY INFORMATION: The information presented in this preamble is organized as follows:

I. General Information
  A. Do these proposed amendments apply to me?
  B. How do I submit CBI?
  C. How do I obtain a copy of this document and other related information?
II. Background
III. Summary of the Proposed Amendments
IV. Rationale for the Proposed Amendments
  A. Amendments to Subpart DDDD of 40 CFR Part 63
  B. Amendments to Appendix B to Subpart DDDD of 40 CFR Part 63
  C. Other Amendments to the Rule
V. Additional Clarifications
  A. Integrated Drying Systems Where Combustion Units That Heat the Dryers Are Used as Control Devices
  B. Applicability of the PCWP Rule to Hot Pressing of Veneers onto a Substrate

VI. Statutory and Executive Order Reviews
A. Executive Order 12866: Regulatory Planning and Review
B. Paperwork Reduction Act
C. Regulatory Flexibility Act
D. Unfunded Mandates Reform Act
E. Executive Order 13132: Federalism
F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
G. Executive Order 13045: Protection of Children from Environmental Health & Safety Risks
H. Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer and Advancement Act

I. General Information

A. Do these proposed amendments apply to me?

Categories and entities potentially affected by today's proposed amendments include:

Category	SIC code [a]	NAICS code [b]	Examples of regulated entities
Industry	2421	321999	Sawmills with lumber kilns.
	2435	321211	Hardwood plywood and veneer plants.
	2436	321212	Softwood plywood and veneer plants.
	2493	321219	Reconstituted wood products plants (particleboard, medium density fiberboard, hardboard, fiberboard, and oriented strandboard plants).
	2439	321213	Structural wood members, not elsewhere classified (engineered wood products plants).

[a] Standard Industrial Classification.
[b] North American Industrial Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by today's proposed amendments. To determine whether your facility is affected by today's proposed amendments, you should examine the applicability criteria in § 63.2231 of the final rule. If you have questions regarding the applicability of today's proposed amendments to a particular entity, consult Ms. Mary Tom Kissell listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. How do I submit CBI?

Do not submit this information to EPA through EDOCKET, regulations.gov, or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

C. How do I obtain a copy of this document and other related information?

In addition to being available in the docket, an electronic copy of today's proposed amendments also will be available on the World Wide Web (WWW) through EPA's Technology Transfer Network (TTN). Following the Administrator's signature, a copy of these proposed amendments will be posted on the TTN's policy and guidance page for newly proposed rules at *http://www.epa.gov/ttn/oarpg*. The TTN provides information and technology exchange in various areas of air pollution control.

II. Background

On July 30, 2004, we promulgated NESHAP for Plywood and Composite Wood Products Manufacturing as subpart DDDD in 40 CFR part 63 (69 FR 45944). Subpart DDDD contains two appendices: an alternative procedure for determining capture efficiency from hot press enclosures (appendix A to subpart DDDD of 40 CFR part 63), and methodology and criteria for demonstrating that an affected source is part of the low-risk subcategory of PCWP manufacturing affected sources (appendix B to subpart DDDD of 40 CFR part 63). Today we are proposing corrections and clarifications to subpart DDDD and both of the appendices to subpart DDDD. For subpart DDDD, we are proposing several changes to ensure that the rule is implemented as intended: (1) Amend the sampling location for coupled control devices; (2) amend language to clarify rule applicability during unscheduled startups and shutdowns; (3) add language to clarify rule applicability for affected sources with no process units subject to compliance options or work practice requirements; and (4) amend selected definitions. A minor numbering error is proposed to be corrected in appendix A to subpart DDDD. The majority of the amendments discussed in today's action are being proposed for appendix B to subpart DDDD. We are proposing amendments to appendix B to subpart DDDD to reduce the number of emissions tests required while ensuring that emissions from all PCWP process units are considered when demonstrating eligibility for the low-risk subcategory. For emission points that would still require emission tests, we are proposing that the emissions tests may be conducted after the low-risk demonstration is submitted. We are also proposing that physical changes necessary to ensure low risk may be completed after the low-risk demonstration is submitted. We are proposing to clarify the calculation of average stack height and some timing issues related to low-risk demonstrations, including the deadline for submitting low-risk demonstrations. Furthermore, we are proposing to amend subpart A to 40 CFR part 63 and subpart DDDD of 40 CFR part 63 and appendix B to subpart DDDD to allow use of a new hazardous air pollutants (HAP) test method developed by the National Council of the Paper Industry for Air and Stream Improvement (NCASI).

Following promulgation of the PCWP rule, the Administrator received a petition for reconsideration filed by the Natural Resources Defense Council (NRDC) and Environmental Integrity Project (EIP) pursuant to section 307(d)(7)(B) of the Clean Air Act (CAA).[1] The petition requested

[1] In addition to the petition for reconsideration, four petitions for judicial review of the final PCWP rule were filed with the U.S. Court of Appeals for the District of Columbia by NRDC and Sierra Club (No. 04–1323, D.C. Cir.), EIP (No. 04–1235, D.C. Cir.), Louisiana-Pacific Corporation (No. 04–1328, D.C. Cir.), and Norbord Incorporated (No. 04–1329, D.C. Cir.). The four cases have been consolidated. In addition, the following parties have filed as interveners: American Forest and Paper Association (AF&PA), Hood Industries, Scotch Plywood, Coastal Lumber Company, Composite Panel Association, APA-The Engineered Wood Association, American Furniture Manufacturers Association, NRDC, Sierra Club, and EIP. Finally, the Formaldehyde Council, Inc. and the State and Territorial Air Pollution Program Administrators and Association of Local

Continued

reconsideration of nine aspects of the final rule: (1) Risk assessment methodology; (2) background pollution and co-located emission sources; (3) dose-response value used for formaldehyde; (4) costs and benefits of the low-risk subcategory; (5) ecological risk; (6) legal basis for the risk-based approach; (7) maximum achievable control technology (MACT) compliance date for affected sources previously qualifying for the low-risk subcategory; (8) startup, shutdown, and malfunction (SSM) provisions; and (9) title V implementation mechanism for the risk-based approach. With the exception of the petitioners' issue with the SSM provisions in subpart DDDD of 40 CFR part 63, all of the petitioners' issues relate to the risk-based approach adopted in the final rule. The issues raised in the petition for reconsideration are broader in scope than the issues addressed in today's proposed amendments. We have published a separate notice of reconsideration to initiate rulemaking by requesting comments on the issues in the petition for reconsideration, including the full content of appendix B to subpart DDDD. We intend to address all comments received on the notice of reconsideration and today's proposed amendments by the time we finalize the amendments.

III. Summary of the Proposed Amendments

Today's proposed amendments to subpart DDDD of 40 CFR part 63 and its appendices are summarized in table 1 of this preamble.

TABLE 1.—SUMMARY OF THE PROPOSED AMENDMENTS

Citation	Change
§§ 63.2232(b) and 63.2292	Amend definition of ''affected source'' to include the combustion unit exhaust streams used to direct-fire process units.
§ 63.2250(a)	Amend the rule's language to clarify the applicability of the compliance options and operating requirements during unscheduled startups and shutdowns.
§ 63.2252	Add a section to clarify that process units that are not subject to compliance options or work practice requirements (*e.g.*, lumber kilns) are excluded from the performance testing, monitoring, SSM plan, recordkeeping, and reporting requirements, except for the initial notification requirements.
§ 63.2262(d)(1)	Allow testing between a wet control device followed by a HAP control device.
§ 63.2269(c)	Amend section to correct numbering of cross-referenced paragraphs.
§ 63.2292	Amend the definition of ''tube dryer'' to clarify that heat is applied in the dryer to reduce the moisture content of the wood fibers or particles. Amend the definition of ''plywood and composite wood products manufacturing facility'' to clarify the products covered by subpart DDDD. Amend the definition of ''plywood'' to clarify that plywood products may be curved or flat. Add definitions of ''molded particleboard'' and ''engineered wood product.''
§ 63.2292 and Appendix B, section 15	Move the definition of ''direct-fired process unit'' from section 15 of appendix B to subpart DDDD to § 63.2292 of subpart DDDD.
Table 4, Lines 6–8	Allow NCASI Method ISS/FP–A105.01 for testing of formaldehyde, methanol, and total HAP.
Table 4, line 10 and Appendix B, Table 2, line 10.	Clarify that measured emissions divided by the capture efficiency provides the emission rate for unenclosed and uncontrolled presses and board coolers.
Appendix A, section 10	Correct misnumbering of sections 10.4 and 10.5.
Appendix B, sections 4(a), 5(a), 6(a) through (c), and Equations 1 and 2.	Amend terminology to refer to ''emission point'' instead of ''process unit.''
Appendix B, section 5(a) and Table 2A	Add Table 2A and conforming text specifying which process units must be tested and which process units may use emission factors or engineering estimates to estimate emissions.
Appendix B, section 5(f)(1)	Add reference to NCASI IM/CAN/WP 99.02, EPA Method 18, and NCASI Method ISS/FP–A105.01.
Appendix B, section 5(f)(2)	Allow use of other EPA Method 29 laboratory analysis procedures with detection limits equal to or lower than atomic absorption spectroscopy (AAS) when claiming zero for non-detect HAP metals measurements.
Appendix B, section 5(i)	Allow use of previous emissions test results (*e.g.*, NCASI IM/CAN/WP 99.01).
Appendix B, section 5(j)	Allow only one of multiple similar process units at a plant site to be tested (*e.g.*, one of three veneer dryers at a plant).
Appendix B, section 5(k)	Specify requirements for developing emissions estimates according to Table 2A.
Appendix B, section 6(a)	Amend to clarify that section 6(a) applies when emissions estimation or testing is performed.
Appendix B, section 6(a)	Add equations for calculation of carcinogen and non-carcinogen weighted-average stack height.
Appendix B, sections 6(b), 6(c), 8(b)(1), and 8(b)(3).	Amend to clarify that weighted-average stack height calculations must be used.
Appendix B, section 7(a)	Amend to correct Web site address
Appendix B, section 8(a)(3)	Require submittal of emissions estimate calculations with low-risk demonstrations.
Appendix B, section 10(a)	Amend date for existing sources to conduct emissions tests and to submit demonstrations of eligibility for the low-risk subcategory.
Appendix B, section 10(c)	Amend date for new sources to conduct emissions tests and to submit demonstrations of eligibility for the low-risk subcategory.
Appendix B, section 11(b)	Amend to clarify that the parameters that defined the affected source as part of the low-risk subcategory must be submitted for incorporation into its title V permit, as opposed to having the permit revised before the MACT compliance date.
Appendix B, section 15	Add definitions of various process units not defined in subpart DDDD and move definition of ''direct-fired process unit'' to § 63.2292.

Air Pollution Control Officials (STAPPA/ALAPCO) are participating in the litigation as amicus curiae.

TABLE 1.—SUMMARY OF THE PROPOSED AMENDMENTS—Continued

Citation	Change
Appendix B, Table 2	Renumber as Table 2B. Replace footnote 1 related to benzene and acrolein testing with a footnote noting that direct-fired process units fired with only natural gas or propane are exempt from HAP metals testing.
Appendix B, Table 2, line 5	Allow NCASI Method ISS/FP–A105.01 for testing of acetaldehyde, acrolein, formaldehyde, and phenol.
Appendix B, Table 2, line 6	Allow use of NCASI IM/CAN/WP 99.02 or EPA Method 18 (40 CFR part 60, appendix A) for benzene testing.
Appendix B, Table 3	Change column heading to ''distance to property boundary.''
Appendix B, Tables 3 and 4	Delete footnote regarding units of measure.

IV. Rationale for the Proposed Amendments

A. Amendments to Subpart DDDD of 40 CFR Part 63

1. Sampling Location

It is common in the PCWP industry for multiple add-on control devices to be used in series (*e.g.*, a wet electrostatic precipitator (WESP) for control of particulate matter (PM) followed by a thermal oxidizer for control of organic HAP and volatile organic compounds (VOC)). Some types of PM control devices have no effect on HAP emissions, including cyclones, multiclones, and baghouses. Wet control devices such as wet scrubbers and WESP are used primarily for PM control but may also affect (either positively or negatively) HAP emissions. The proposed rule did not specify where inlet sampling sites should be located when the HAP control device is preceded by a wet scrubber or WESP. As a result of industry comments on the proposed rule, § 63.2262(d)(1) of the final PCWP rule requires that, ''* * * for HAP-altering controls in sequence, such as a wet control device followed by a thermal oxidizer, sampling sites must be located at the functional inlet of the control sequence (*e.g.*, prior to the wet control device) and at the outlet of the control sequence (*e.g.*, thermal oxidizer outlet) and prior to any releases to the atmosphere.''

Following signature of the final rule, a stakeholder experienced with testing PCWP process units indicated that some coupled control systems are configured such that obtaining representative emissions measurements at sampling locations prior to the wet control device is not possible (*e.g.*, inlet sampling locations fail to meet the criteria in Method 1 of 40 CFR part 60, appendix A). However, representative sampling could be accomplished at the outlet to the wet control device and inlet to the organic HAP control device. For those situations where coupled control systems are used to meet a compliance option that requires inlet sampling, we agree that sampling at the inlet of the HAP control device is sufficient and are proposing to amend the language in § 63.2262(d)(1) to allow this alternative.

2. Definitions

Tube dryer. Unlike in the proposed PCWP rule, primary tube dryers and secondary tube dryers are treated as separate process units in the final rule as a result of public comments received on the proposed rule (*see* 69 FR 45961–45962, July 30, 2004). Definitions of primary tube dryer and secondary tube dryer were added to the final rule to distinguish between the two types of tube dryers. The final rule also contains an associated definition of ''tube dryer,'' which is the same definition that was proposed. Following signature of the final rule, some industry representatives expressed concern that the definitions of tube dryer and secondary tube dryer could be misinterpreted to include ductwork used to pneumatically transfer hot wood furnish from a primary tube dryer to a holding bin, even though no heat is applied to the furnish as would occur for a secondary tube dryer. The promulgated definition indicates that the tube dryer is ''* * * operated at elevated temperature and used to reduce the moisture of wood * * *'' (which could occur with hot material passing though a duct even if no heat is applied). Given that tube dryers look like ductwork, we agree that this could be confusing to permitting authorities. To prevent misinterpretations and clarify that heat is applied in the tube dryer, we are proposing to amend the definition of ''tube dryer'' to replace the words ''operated at elevated temperature and used'' with ''operated by applying heat.''

Affected source. Following Administrator signature of the final PCWP rule, it was brought to our attention that applicability of the final PCWP rule and the Industrial/Commercial/Institutional Boilers and Process Heaters NESHAP (40 CFR part 63, subpart DDDDD; referred to as the ''Boilers/Process Heaters rule'' throughout the remainder of this preamble) was unclear with respect to combustion units that direct-fire dryers. When a combustion unit supplies heat by directly exhausting combustion gas through a dryer, we would consider the dryer to be a ''direct-fired dryer.'' The HAP emissions from a direct-fired dryer are actually a combination of the emissions from the combustion unit exhausting into the dryer and the emissions that result from drying the wood. Because the final PCWP rule regulates emissions from direct-fired dryers, those combustion unit exhaust streams that direct-fire dryers would not be subject to the requirements of the final Boilers/Process Heaters rule. Section 63.7491(l) of the final Boilers/Process Heaters rule states that any boiler or process heater specifically listed as an affected source in another standard under 40 CFR part 63 is not subject to the Boilers/Process Heaters rule. Confusion has resulted because the PCWP affected source definition contains no mention of combustion units (*e.g.*, boilers or process heaters). To clarify applicability of the final PCWP rule, we are proposing to amend the definition of ''affected source'' to clearly state that combustion unit exhaust streams used to direct-fire dryers are part of the PCWP affected source.

Our proposed amendment to the definition of ''affected source'' specifically refers to ''any combustion unit exhaust stream'' rather than to individual combustion units. There are numerous configurations of combustion units and drying operations in the PCWP industry including, for example, suspension burners that are built into individual dryers and stand-alone combustion units. Stand-alone combustion units can have several exhaust streams including, for example, exhaust streams that directly fire multiple dryers and exhaust streams that provide heat for other uses (*e.g.*, indirect heat for a thermal oil heater). The exhaust streams that directly fire dryers would be part of the PCWP

affected source because the combustion gases come into direct contact with the wood material, and the dryer exhaust is a mixture of combustion gases and process gases. An exhaust stream that supplies indirect heat for other uses would be part of the PCWP affected source if it is eventually routed through the direct-fired dryers, such that it too contacts the wood material and becomes a mixture of combustion gases and process gases. However, if the indirect heat exhaust stream does not routinely pass through the direct-fired dryers, then this exhaust stream would be subject to the final Boilers/Process Heaters rule. Thus, as stated in the preamble to the final PCWP rule (*see* 69 FR 45961 and 45963, July 30, 2004), there are combustion units in the PCWP industry that can be subject to both the PCWP and Boilers/Process Heaters final rules. We refer to ''combustion unit exhaust stream'' in our proposed amendment to clarify that different exhaust streams must be evaluated separately to determine applicability of the PCWP and Boilers/Process Heaters final rules for those individual exhaust streams.

Direct-fired process unit. In tandem with our proposed addition to the definition of ''affected source,'' we are also proposing to move the definition of ''direct-fired process unit'' from appendix B to subpart DDDD to § 63.2292 of subpart DDDD. Previously, the definition of ''direct-fired process unit'' was only needed in appendix B to subpart DDDD; however, since the proposed amendment to the ''affected source'' definition refers to direct firing, the definition of ''direct-fired process unit'' would be needed for subpart DDDD as well. Appendix B to subpart DDDD references all of the definitions in § 63.2292 of subpart DDDD.

Plywood and composite wood products manufacturing facility. Following promulgation of the PCWP rule, we have received questions regarding applicability of the final PCWP rule to facilities that manufacture molded particleboard products. The promulgated definition of ''plywood and composite wood products manufacturing facility'' has caused some confusion because it does not specifically mention molded particleboard manufacturing. Molded particleboard is produced by hot pressing a mixture of wood particles and resin into a shape (*e.g.*, a pallet, furniture part, toilet seat, etc.) using a press mold uniquely designed for the product. The press molds used for molded particleboard products are designed very differently from the platen or continuous presses used to manufacture conventional particleboard panels. Prior to promulgation, we determined that MACT for particleboard press molds is no emission reduction, and, therefore, there are no requirements in the final PCWP rule for these press molds. However, molded particleboard facilities can operate dry rotary dryers or green rotary dryers identical to those operated by conventional particleboard plants. Rotary dryers at molded particleboard manufacturing facilities were included in the MACT determination for PCWP dry and green rotary dryers. The final PCWP rule contains work practice requirements for dry rotary dryers and control requirements for green rotary dryers. In order to ensure that MACT is applied as intended for these dryers, we are proposing to amend the definition of ''plywood and composite wood products manufacturing facility'' to include molded particleboard manufacturing. Note that only those molded particleboard manufacturers that are major sources of HAP emissions are potentially affected by this clarification to the definition of ''plywood and composite wood products manufacturing facility.''

Several other applicability questions have been raised regarding the definition of ''plywood and composite wood products manufacturing facility.'' As promulgated, a ''plywood and composite wood products manufacturing facility'' is ''a facility that manufactures plywood and/or composite wood products by bonding wood material (fibers, particles, strands, veneers, etc.) or agricultural fiber, generally with resin under heat and pressure, to form a structural panel or engineered wood product * * *.'' We have received several questions about the applicability of the rule to products that are neither structural panels nor engineered wood products. Although some products that may not be considered structural panels or engineered wood products are listed at the end of the definition of ''plywood and composite wood products manufacturing facility'' (*e.g.*, kiln-dried lumber), other products that we intended to cover are not listed in this definition. The phrase ''structural panel or engineered wood product'' was never intended to be a basis of exclusion from the source category; instead, it was intended to summarize the majority of products made at PCWP manufacturing facilities. Certain products that typically would not be considered either structural panels or engineered wood products were included in the MACT floor analysis and are subject to the promulgated rule. We propose to clarify our intent by amending the first sentence of the definition of ''plywood and composite wood products manufacturing facility'' to cover a wider variety of products.

Plywood. We also received questions regarding applicability of the PCWP final rule to operations where veneer is glued (with heat and pressure) to form a curved wood component or onto a curved wood component rather than a flat panel. The promulgated definition of ''plywood'' is ''* * * a panel product consisting of layers of wood veneers hot pressed together with resin. Plywood includes panel products made by hot pressing (with resin) veneers to a substrate such as particleboard, medium density fiberboard, or lumber.'' We did not define ''panel product'' in the final rule; however, we intended for the term to be interpreted broadly. We consider a product manufactured by hot-pressing veneers together or onto a substrate with resin to be plywood, regardless of the curvature of the end product. We propose to amend the definition of ''plywood'' to clarify our intent. There are no control requirements or work practice requirements for plywood pressing operations in the final PCWP rule. Therefore, facilities manufacturing products that meet the definition of ''plywood'' in the final rule (but have no other operations subject to the control, work practice, or operating requirements in the final PCWP rule) need only to submit an initial notification stating that they have no equipment subject to the rule (as discussed in the next section of this preamble).

Molded particleboard. To supplement our proposed addition of molded particleboard manufacturing to the definition of ''plywood and composite wood products manufacturing facility,'' we are also proposing to add a definition of ''molded particleboard'' to subpart DDDD of 40 CFR part 63.

Engineered wood products. Following promulgation of the PCWP rule, we received several applicability questions regarding engineered wood products. To assist stakeholders in determining what products we consider to be engineered wood products, we are proposing to add a definition of ''engineered wood product'' to subpart DDDD of 40 CFR part 63.

3. Affected Sources With No Process Units Subject to the Compliance Options or Work Practice Requirements

Following promulgation, we received several questions regarding applicability of general recordkeeping and reporting

requirements for affected sources with no equipment subject to specific requirements in the final rule. To clarify our intent in the final rule, we are proposing to add to subpart DDDD of 40 CFR part 63 a new section 63.2252, entitled ''What are the requirements for process units that have no control or work practice requirements?'' The proposed section states that you are not required to comply with the compliance options, work practice requirements, performance testing, monitoring, SSM plans, and recordkeeping or reporting requirements of this subpart, or any other requirements in subpart A of this part, except for the initial notification requirements in § 63.9(b), for process units not subject to the compliance options or work practice requirements specified in § 63.2240. Thus, affected sources without process units subject to the compliance options or work practice requirements (for example, lumber kilns, glue-laminated beams, or wood I-joists) would not be subject to the performance testing requirements, monitoring requirements, SSM plan requirements, and recordkeeping or reporting requirements of subpart DDDD, or any other requirements in subpart A of 40 CFR part 63. The proposed amendment is appropriate because no reports other than the initial notification would apply to these process units. The SSM plan is not necessary or required for process units not subject to specific requirements of the final rule because § 63.6(e)(3) of subpart A of this part requires an affected source to develop an SSM plan for process units subject to and control equipment used to comply with the relevant standard. The final PCWP rule was not intended to require anything other than the initial notification for process units not subject to the compliance options or work practice requirements.

4. Incorporation by Reference of NCASI Test Methods

With today's action, we are proposing to amend 40 CFR 63.14 by revising paragraph (f) to incorporate by reference one test method developed by the NCASI, pending review by EPA: Method ISS/FP–A105.01, Impinger Source Sampling Method for Selected Aldehydes, Ketones, and Polar Compounds. The method is available from the NCASI, Methods Manual, P.O. Box 133318, Research Triangle Park, NC 27709–3318 or at *http://www.ncasi.org.* It is also available from the docket for the proposed amendments (Docket ID No. OAR–2003–0048).

The NCASI Method ISS/FP–A105.01 was developed as an additional test method for measuring total HAP that may be used for high-moisture sources. The NCASI Method ISS/FP–A105.01 is not appropriate for measurement of benzene. In today's proposed amendments, NCASI Method ISS/FP–A105.01, which is a self-validating method, would be allowed, pending our review, as an alternative to:

- EPA Method 320, Measurement of Vapor Phase Organic and Inorganic Emission by Extractive FTIR, for measuring methanol, formaldehyde, acetaldehyde, acrolein, phenol or total HAP;
- EPA Method 0011, Sampling for Selected Aldehyde and Ketone Emissions from Stationary Sources, for measuring formaldehyde;
- EPA Method 316, Sampling and Analysis for Formaldehyde Emissions from Stationary Sources in the Mineral Wool and Wool Fiberglass Industries, for measuring formaldehyde;
- EPA Method 308, Procedure for Determination of Methanol Emission from Stationary Sources, for measuring methanol;
- NCASI Method CI/WP–98.01, Chilled Impinger Method for Use at Wood Products Mills to Measure Formaldehyde, Methanol, and Phenol, for measuring formaldehyde or methanol; and
- NCASI Method IM/CAN/WP–99.02, Impinger/Canister Source Sampling Method for Selected HAPs at Wood Products Facilities, for measuring methanol, formaldehyde, acetaldehyde, acrolein, phenol or total HAP.

B. Amendments to Appendix B to Subpart DDDD of 40 CFR Part 63

1. Addition of Emissions Estimation Procedures

Appendix B to subpart DDDD provides the methodology and criteria for demonstrating that your affected source is part of the low-risk subcategory of PCWP manufacturing facilities. As promulgated, appendix B to subpart DDDD requires emissions testing of all PCWP process units for up to 13 HAP. Table 2 of this preamble summarizes the process units that must be tested for each HAP and the emissions test methods specified in appendix B to subpart DDDD, as promulgated, for each HAP.

TABLE 2.—EMISSIONS TEST METHODS SPECIFIED IN APPENDIX B TO SUBPART DDDD, AS PROMULGATED

HAP	Process units	Specified test method(s)
Acetaldehyde, acrolein, formaldehyde, phenol	All process units	NCASI IM/CAN/WP–99.02 or EPA Method 320 or ASTM D6348–03.
Benzene	All process units	EPA Method 320 or ASTM D6348–03.
Methylene diphenyl diisocyanate (MDI)	Presses that process board containing MDI resin.	EPA Method 320 or Conditional Test Method 031.
Arsenic, beryllium, cadmium, chromium, lead, nickel, manganese.	Direct-fired process units	EPA Method 29.

Notes: EPA Method 320 is located in 40 CFR part 63, appendix A. EPA Method 29 is located in 40 CFR part 60, appendix A. The NCASI IM/CAN/WP–99.02 and ASTM D6348–03 were incorporated by reference (see 40 CFR 63.14) and Conditional Test Method 031 is posted at *http://www.epa.gov/ttn/emc/ctm.html.*

Following promulgation, stakeholders commented that emissions testing is not feasible or necessary for every process unit. The stakeholders claimed that many PCWP process units are not configured for emissions testing and that testing of every type of PCWP process unit (especially those with insignificant emissions) is not necessary to ensure an accurate assessment of risk. In addition, the stakeholders stated that requiring emissions testing for acrolein and benzene from all PCWP process units is not justified by the available data, which show that emissions of acrolein and benzene are frequently not detected in the exhausts from many types of PCWP process units. The stakeholders also requested that HAP metals emissions testing be limited to those direct-fired process units that fire fuels other than natural gas and that fuel analysis be allowed as an alternative to HAP metals emissions testing.

Selection of Process Units to be Included in Low-risk Demonstration. EPA has determined that every process

unit with potentially significant emissions, including very small emission sources, must be included in the low-risk demonstration because the low-risk demonstration is based on the cumulative risk from the process units within the PWCP affected source. Generally, this means that EPA has included all process units with any detectable emissions. However, we wanted to determine if costs could be lowered without affecting the quality of the emission estimates. So, we explored the feasibility of testing each type of PCWP process unit and available emissions estimation methods. We must ensure an accurate emissions determination for the affected source, given that the purpose of the low-risk demonstration is to certify that a PCWP affected source poses a risk to human health and the environment less than the low-risk criteria specified in appendix B to subpart DDDD [2] and is eligible to become exempt from MACT compliance requirements. Therefore, for purposes of the low-risk demonstration, we prefer to have emissions test data over emissions estimates when emissions test data can be reasonably obtained.

We believe that it is feasible to perform emissions testing for the following types of PCWP process units: Fiberboard mat dryers (heated and cooling zones), green rotary dryers, hardboard ovens, press predryers, pressurized refiners, primary tube dryers, secondary tube dryers, reconstituted wood product board coolers, reconstituted wood product presses, softwood veneer dryers (heated zones), rotary strand dryers, conveyor strand dryers (all zones), dry rotary dryers, veneer redryers (heated by conventional means), hardwood veneer dryers (heated zones), rotary agricultural fiber dryers, agricultural fiber board presses, paddle-type particle dryers, agricultural fiberboard mat dryers, and atmospheric refiners. Therefore, emissions testing would continue to be required for all of the above listed process units. Most of the process units listed above have control or work practice requirements under subpart DDDD.

We believe that emissions testing is not feasible for the following types of process units: Fiberboard mat dryers (fugitive emissions), softwood veneer dryer (cooling zones and fugitive emissions), hardwood veneer dryers (cooling zones), radio-frequency veneer redryers, softwood plywood presses, hardwood plywood presses, engineered wood products presses, humidifiers, formers, blenders, sanders, saws, fiber washers, chippers, log vats, lumber kilns, storage tanks, wastewater operations, stand-alone digesters, veneer kilns, particleboard press molds, and particleboard extruders. Some of these process units are vented primarily for dust control and reclaim of process materials, and their venting systems are not designed for flow measurement or measurement of organic gases. Some of the process units are not vented (i.e., are fugitive emissions sources) or are only partially vented. The configuration of these process units, in terms of how and if they vent to the atmosphere, varies significantly from plant to plant. Often, the emission points from these process units (where defined emission points exist) are not configured such that EPA Method 1 or EPA Method 2 (40 CFR part 60, appendix A) criteria for selection of sampling ports and measurement of gas velocity could be met. Emissions data are available from an extensive emissions testing program where testable units in several of the process unit groups were identified. These emissions data (along with other available data collected during NESHAP development) have been used to develop emission factors. Almost all of the test data were reviewed by industry experts. All the data, except the lumber kiln data, were reviewed by EPA, were available for the public to review at proposal, and were available for public review during EPA's AP–42 review process. (See legacy docket A–98–44, items titled ''Emission Factor Documentation for AP–42 Section 10.5, Plywood Manufacturing,'' ''Emission Factor Documentation for AP–42 Section 10.6.3,'' ''Medium Density Fiberboard Manufacturing,'' ''Emission Factor Documentation for AP–42 Section 10.6.2,'' ''Particleboard Manufacturing,'' ''Emission Factor Documentation for AP–42 Section 10.6.1,'' ''Waferboard/Oriented Strandboard Manufacturing,'' and ''Documentation of Emission Factor Development for the Plywood and Composite Wood Products Manufacturing NESHAP.'') In addition, the lumber kiln data are now available in ''Procedures for Determining Emissions from Plywood and Composite Wood Products Process Units for Low-Risk Demonstrations.'' Therefore, as discussed later in this section, we are proposing to allow that emission factors be used to estimate emissions from the hard-to-test process units for purposes of the PCWP low-risk demonstrations. Other emissions estimation methods (*e.g.*, engineering estimates) are proposed to be allowed for hard-to-test process units for which no emission factors are available.

Based on the available data, three types of process units (miscellaneous coating operations, softwood veneer dryer fugitive emissions, and log chipping operations) are hard to test but do not emit any of the HAP listed in appendix B to subpart DDDD. Thus, miscellaneous coating operations, softwood veneer dryer fugitive emissions, and log chipping operations would not need to be considered in the low-risk demonstration, under the proposed amendments.

There may be additional ancillary PCWP process units for which no HAP data are available (*e.g.*, log storage piles and material handling operations). Such processes are likely to be hard to test. No information is available to conclude that there are appendix B to 40 CFR part 63 HAP emissions from other PCWP processes not mentioned elsewhere in today's proposed amendments. Nevertheless, in the event that there may be an additional HAP emissions source within the PCWP affected source that is not listed elsewhere in appendix B to subpart DDDD, a category of ''other ancillary processes that emit appendix B HAP emissions'' is proposed to be added to appendix B to subpart DDDD, and engineering estimates for all of the appendix B HAP would be allowed for such processes. We request comment (and emissions data, if available) regarding any PCWP emissions sources not listed in appendix B to subpart DDDD that are known to emit appendix B HAP emissions. It is not our intent to require quantification of emissions for ancillary processes that do not emit appendix B HAP. Our intent with the category of ''other ancillary processes that emit appendix B HAP emissions'' is to capture unique equipment (*e.g.*, a one-of-a-kind dryer) that could reasonably be expected to emit appendix B HAP, but is not otherwise covered in the process unit definitions provided in subpart DDDD of 40 CFR part 63 and appendix B to subpart DDDD. Therefore, we request comment on whether it would be appropriate to include a list of ''insignificant

[2] To be considered low risk, the PCWP affected source must meet the following criteria: (1) The maximum off-site individual lifetime cancer risk at a location where people live is less than one in one million for carcinogenic chronic inhalation effects; (2) every maximum off-site target-organ specific hazard index (TOSHI) (or, alternatively, an appropriately site-specific set of hazard indices based on similar or complementary mechanisms of action that are reasonably likely to be additive at low dose or dose-response data for your affected source's HAP mixture) at a location where people live is less than or equal to 1.0 for noncarcinogenic chronic inhalation effects; and (3) the maximum off-site acute hazard quotients for acrolein and formaldehyde are less than or equal to 1.0 for noncarcinogenic acute inhalation effects.

activities'' for purposes of appendix B to subpart DDDD. We also request comment on what activities should be included in such a list. Commenters may want to refer to a list of proposed insignificant activities in the docket which was submitted by AF&PA, titled ''Proposed Categorical Insignificant Sources.''

To incorporate emissions estimation procedures, our proposed amendment to appendix B to subpart DDDD would add a table (table 2A to appendix B to subpart DDDD) that states for each process unit whether emissions testing is required or emissions estimation is allowed for each of the appendix B HAP. If emissions estimates are allowed, then the proposed table 2A to appendix B to subpart DDDD would specify the emission factor (or other emissions estimation technique) to be used in developing the emissions estimates. Related text is proposed to be added to sections 5(a) and 5(k) of appendix B to subpart DDDD. Section 6(a) of appendix B to subpart DDDD is also being amended to clarify that it applies when emissions estimation or testing is performed. We are proposing to add definitions of process units not already defined in subpart DDDD to section 15 of appendix B to subpart DDDD. In addition, we are proposing to add text to section 8(a)(3) of appendix B to subpart DDDD to specify that emissions estimate calculations must be submitted with the low-risk demonstration.

Selection of Emissions Estimation Procedures. As mentioned previously, emission factors could be used under the proposed amendments to estimate emissions from most of the hard-to-test process units. To streamline completion and review of the low-risk demonstrations, our proposed amendment to appendix B to subpart DDDD specifies emission factors that are to be used in low-risk demonstrations. We are not proposing to allow facilities to choose their own emission factors (from AP–42 or elsewhere) because we believe we have the most extensive collection of PCWP HAP emissions data available and because additional time would be required for EPA to verify the emission factors selected for each process unit. The emission factors proposed to be included in appendix B to subpart DDDD are the maximum emission factors available for each type of process unit (*i.e.*, the emission factor resulting from the highest emissions test). Use of the maximum emission factor builds conservatism into the emissions estimates to help account for unit-to-unit variability and ensures protection of human health. In addition, the maximum emission factor is available for all process units for which we have sufficient data. While we believe the maximum emission factor is the best statistical approach as explained above, we request comment on using other statistical approaches. Facilities approaching the limits of the low-risk criteria may refine their analysis of HAP emitted by reconfiguring their process unit, if possible, and conducting emissions testing.

Estimation of emissions would be allowed for acetaldehyde, acrolein, formaldehyde, phenol, and benzene. In addition, estimation of methylene diphenyl diisocyanate (MDI) emissions would be allowed for process units processing material containing MDI resin. Except for lumber kilns, estimation of HAP metals emissions is not necessary because the hard-to-test process units are heated by means other than direct firing (if heated at all). In some cases, a particular HAP listed on appendix B to subpart DDD was not detected in any emissions test run conducted for a process unit type. We are proposing that no emissions estimate be developed for HAP that have not been detected from a process unit group because the available emission factors are based on values equal to one-half of the method detection limit (MDL) and are of limited use. Engineering estimates are proposed in some cases where all of the data are non-detect but the available data sets are small, and it is reasonable to believe that a particular HAP could be emitted. In some cases, no applicable emission factor is available for certain HAP and process unit combinations where we expect the HAP could be detected (*e.g.*, phenol from oriented strandboard (OSB) blenders and MDI from MDI blenders). We are proposing to accept engineering estimates based on information available to the facility in cases where no applicable emission factor is available for a HAP that may reasonably be expected to be emitted from a certain type of process unit.

Our data base of emission factors does not include emission factors for lumber kilns. It is difficult to measure emissions from lumber kilns due to kiln air flow design, fugitive emissions, and the lengthy kiln batch cycle (*e.g.*, 24 hours for softwood kilns, days for hardwood kilns). Therefore, little emissions test data are available for use in developing HAP emission factors for lumber kilns. Methods for quantifying lumber kiln flow rates vary from test to test. Most of the emissions test data that are available (generally total hydrocarbon (THC) data) contain calculated flow rates or other assumptions that bring the validity of the data into question. A few tests have been conducted on both small- and full-scale lumber kilns to determine emissions of HAP (generally formaldehyde and methanol). We reviewed available information on lumber kiln emissions and selected the maximum emission factors of HAP listed in appendix B to subpart DDDD from the literature. Today, we are proposing these emission factors for purposes of estimating lumber kiln emissions for the low-risk demonstration. Engineering estimates of HAP metals emissions are proposed for direct-fired lumber kilns. While emissions testing of full-scale lumber kilns has proven to be very difficult, studies have shown that testing of small-scale lumber kilns can be used to reasonably approximate emissions from full-scale lumber kilns if representative lumber samples are dried and the venting characteristics of the small-scale kiln mimic those of the full-scale kiln. Several U.S. universities and private laboratories operate small-scale kilns. To approximate emissions from full-scale kilns, a representative sample of lumber is taken from the full-scale kiln facility, packaged to prevent moisture loss, and shipped to the location of the small-scale kiln where the full-scale kiln's drying cycle (*e.g.*, time and temperatures) is mirrored during emissions testing. Small-scale kilns are designed for more accurate air flow measurement and are less costly to test. In addition to proposing emission factor estimates based on the available information, we request comment on whether it would be appropriate to allow facilities to commission emissions testing at a representative small-scale lumber kiln for purposes of the low-risk demonstration. We also request comment on any standard procedures for submitting lumber samples and conducting small-scale kiln emissions testing that should be incorporated into or referenced by appendix B to subpart DDDD. When submitting comments on standard procedures, please refer to a document in the docket entitled ''Considerations for a Small-scale Kiln Emission Testing Program.''

Emission factors are not available for PCWP resin storage tanks and PCWP wastewater/process water operations. For resin storage tanks, we are proposing to specify in appendix B to subpart DDDD that facilities may apply the maximum emissions estimates reported in our MACT survey responses for each tank (depending on the tank contents). We are proposing to specify that facilities generate engineering estimates of appendix B HAP emissions

from wastewater/process water operations. Alternatively, we have developed computer models for estimating emissions from storage tanks (TANKS) and wastewater/process water operations (WATER9). Both models are available at *http://www.epa.gov/ttn/chief/software/index.html*. The proposed amendments to appendix B to subpart DDDD allow facilities to use these models to develop more refined estimates of emissions from resin storage tanks and wastewater/process water operations. We also request comment on other methods that could be used in appendix B to subpart DDDD to quantify emissions from wastewater/process water operations, such as the approach outlined in forms VII and VIII of appendix C to 40 CFR part 63 and described further with respect to the PCWP industry in the supporting information for today's proposed amendments.

Application of Emissions Estimation Procedures. To apply emission factors, facilities would need the emission factor (in terms of pounds of HAP per process unit throughput) supplied in appendix B to subpart DDDD and their site-specific process unit throughput. None of the hard-to-test process units are equipped with HAP control devices; therefore, control efficiency is not a variable in the emission factor estimates for low-risk demonstrations. Facilities may also use process unit throughput or other parameters in their engineering estimates allowed where emission factors were not available.

Process unit throughput could be based on process unit capacity or actual throughput. Section 11 of appendix B to subpart DDDD requires facilities to incorporate parameters that define the affected source as part of the low-risk subcategory (including production rate) as federally enforceable limits in their title V permits. Furthermore, according to section 13(a) of appendix B to subpart DDDD, facilities must certify with their ongoing title V certifications that the basis for their low-risk demonstrations have not changed (including any process changes that would increase HAP emissions, such as a production rate increase). Given these requirements, we are proposing to allow facilities to use the process unit throughput that they wish to incorporate into their title V permit in their emissions estimates for the low-risk demonstration. We decided not to mandate use of process unit capacity for the emissions estimations in order to give facilities the flexibility to choose a federally enforceable permit limit on their production rate should they wish to minimize emissions by limiting production.

Some PCWP process units have multiple emissions points of varying height. For purposes of the low-risk demonstration, it is necessary to have an emission rate and emissions release parameters (*e.g.*, stack height) associated with each emission point. Thus, we are proposing that emissions estimates developed for process units with multiple emission points be divided evenly across the emission points. For example, emissions estimated for a softwood plywood press with four vents would be divided by four, with one-fourth of the estimated emissions being assigned to each press vent. We are also proposing minor changes to the wording throughout appendix B to subpart DDDD to clarify that individual emission points are to be considered separately.

Acrolein and Benzene Testing Requirements. As promulgated, appendix B to subpart DDDD allows a process unit to be excluded from the testing requirements for benzene and acrolein for purposes of the low-risk demonstration when EPA determines it will not emit detectable amounts of benzene or acrolein, respectively (see footnote 1 to table 2 to appendix B to subpart DDDD, as promulgated). We evaluated the available acrolein and benzene data for those process units that must be tested for purposes of the low-risk demonstration (*i.e.*, process units for which emissions estimation is not allowed). The results of our review are included in proposed table 2a to appendix B to subpart DDDD. Because our review is complete and the results available, we are proposing to delete footnote 1 to table 2 to appendix B to subpart DDDD.

Determining MDI Emissions. At promulgation, appendix B to subpart DDDD specified that MDI emissions testing need only be conducted for presses processing board containing MDI resin. To date, the only MDI emissions data available is for presses processing board formed using MDI resin. However, upon further consideration of the potential for MDI emissions, we note that there may be other, less common process units processing materials containing MDI resin. Table 2A, proposed to be added to appendix B to subpart DDDD, specifies that emissions testing must be performed for primary and secondary tube dryers, reconstituted wood products presses and board coolers, and agricultural fiber presses if material containing MDI resin is processed. We are proposing to require engineering estimates of MDI emissions for OSB, particleboard, and medium density fiberboard (MDF) blending and forming operations, finishing sanders and saws, and I-joist curing chambers that process material containing MDI resin. We are also proposing to require estimates of MDI emissions from MDI resin storage tanks.

2. Emission Testing Requirements

Stakeholders noted the resource burden associated with the emissions testing requirements in appendix B to subpart DDDD and suggested several ways the burden may be reduced without sacrificing details necessary to ensure that the low-risk demonstration is health-protective. As a result of some of these suggestions, and in addition to our proposal to allow emissions estimation procedures for several process units (discussed previously in this preamble), we are proposing to amend some aspects of the emissions testing requirements in appendix B to subpart DDDD.

First, stakeholders suggested that only one of multiple identical dryers at a facility would need to be tested (*e.g.*, only one of three identical veneer dryers) and that the emissions data from the dryer tested could be applied to the other identical dryers. This change would decrease the number of emissions tests required without significantly affecting the quality of the emissions determination. After reviewing emissions data gathered at nearly the same time from multiple similar PCWP process units at a plant site, we agree that this approach would be sufficient for purposes of the PCWP low-risk demonstration. We are proposing to amend appendix B to subpart DDDD to allow application of test results from one process unit to other similar process units at the same plant site, provided that certain conditions are met. Facilities would be required to explain how the process units are similar in terms of design, function, heating method, raw materials processed, residence time, change in material moisture content, operating temperature, resin type processed, and any other parameters that may affect emissions. To account for minor variations in process parameters, facilities would be required to explain and test the process unit that would be expected to have the greatest emissions (*e.g.*, the unit with a slightly (5 to 10 percent) higher temperature set point, dryer processing furnish with slightly higher inlet moisture content, press processing thicker panels, process unit with the greater throughput, etc.). Also, if the process units have different throughput rates, then facilities must convert the emissions test results to terms of pounds of HAP per unit

throughput prior to applying the emissions test data to other similar process units.

Second, stakeholders requested that we allow HAP data collected from previous emissions tests to be used for purposes of the low-risk demonstration. Allowing use of previous emissions test results would decrease the number of emissions tests required without significantly affecting the quality of the emissions determination. Thus, we are proposing to amend appendix B to subpart DDDD to allow use of previous emissions test results, provided that certain conditions are met. The emissions tests must have been conducted using the test methods and procedures specified in appendix B to subpart DDDD. Previous emissions test results obtained using the former NCASI Method IM/CAN/WP–99.01 are acceptable. Also, the process units for which previous emissions test data are used currently must be operated in the same manner (*e.g.*, with the same raw materials, same operating temperature, etc.) as during the previous emissions tests, and the process units may not have been modified such that emissions would be expected to differ (notwithstanding normal test-to-test variability) from the previous emissions tests.

Third, stakeholders requested that NCASI Method IM/CAN/WP–99.02 be listed in appendix B to subpart DDDD for measurement of benzene as well as for measurement of acetaldehyde, acrolein, formaldehyde, and phenol. Following proposal of the PCWP rule, commenters requested that we replace references to NCASI Method IM/CAN/WP–99.01 in subpart DDDD of 40 CFR part 63 (for measurement of acetaldehyde, acrolein, formaldehyde, methanol, phenol, and propionaldehyde) with the revised version of the same method (NCASI Method IM/CAN/WP–99.02). We reviewed NCASI Method IM/CAN/WP–99.02 for applicability with respect to the six HAP named in subpart DDDD and concluded that NCASI Method IM/CAN/WP–99.02 was appropriate for measurement of these six HAP. Prior to promulgation, we did not review NCASI Method IM/CAN/WP–99.02 with respect to benzene, and, therefore, we did not list it in appendix B to subpart DDDD as an applicable method for measurement of benzene. Upon further review of the method, we agree that it is appropriate for measurement of benzene, and we are proposing to amend appendix B to subpart DDDD to allow use of NCASI Method IM/CAN/WP–99.02 for benzene measurement. Stakeholders also requested that EPA Method 18 (40 CFR part 60, appendix A) be included in appendix B to subpart DDDD for benzene measurement, and they expressed concern about using Fourier Transform Infrared (FTIR) spectroscopy for benzene. We agree that EPA Method 18 is appropriate for measurement of benzene. We are proposing to add Method 18 to appendix B to subpart DDDD. We request comment on the applicability of FTIR for measurement of benzene and the other HAP listed in appendix B to subpart DDDD. In addition, as stated previously, we are proposing to incorporate by reference NCASI Method ISS/FP–A105.01 (following EPA approval of the method) into appendix B to subpart DDDD to provide another option for measurement of acetaldehyde, acrolein, formaldehyde, and phenol.

Fourth, stakeholders recommended changes to appendix B to subpart DDDD regarding treatment of nondetect data gathered using EPA Method 29 (40 CFR part 60, appendix A). As promulgated, appendix B to subpart DDDD allows Method 29 nondetect measurements to be treated as zero if the samples are analyzed using atomic absorption spectroscopy (AAS). Otherwise, nondetect data for individual HAP must be treated as one-half of the method detection limit. Stakeholders pointed out that laboratory methods other than AAS can achieve method detection limits equal to or lower than those obtained with AAS and requested that zero be assigned to non-detect measurements analyzed by these other laboratory methods. Thus, we are proposing to amend appendix B to subpart DDDD to state that zero may be used for Method 29 non-detect measurements if the samples are analyzed using AAS or another laboratory method specified in Method 29 with detection limits lower than or equal to the AAS detection limits.

Lastly, stakeholders stated that HAP metals emissions testing is not necessary for direct-fired process units using only natural gas. The vast majority of PCWP direct-fired process units are fired with either wood or natural gas. A small number of PCWP direct-fired process units are fired with other fuels. Natural gas, or less commonly, propane, is often used as a backup or auxiliary fuel. Although we believe it is possible that HAP metals emissions could originate from combustion in direct wood-fired process units, we agree that measurable emissions of HAP metals would not be expected from natural gas-fired process units. We also would not expect measurable HAP metals emissions from process units direct-fired with propane. Therefore, we are proposing to amend appendix B to subpart DDDD to exclude process units direct-fired with only natural gas or propane from the HAP metals testing requirements. We would continue to require HAP metals testing for process units direct-fired using wood, other fuels, or a combination of natural gas (or propane) and wood or other fuels. For clarity, we are also proposing to add definitions of ''natural gas'' and ''propane'' to appendix B to subpart DDDD.

Stakeholders further suggested that we allow a fuel analysis approach similar to that in the Boilers/Process Heaters final rule (40 CFR part 63, subpart DDDDD) as an alternative to HAP metals testing. The fuel analysis method described in the Boilers/Process Heaters final rule allows affected sources to demonstrate compliance with the total selected metals (TSM) emissions limit using fuel analysis if the 90th percentile confidence level of metals concentration in the fuel is less than the emissions limit (see 69 FR 55218, September 13, 2004). The specific requirements for conducting a fuel analysis are presented in sections 63.7521 and 63.7530(d)(1), (2), and (4) of the Boilers/Process Heaters final rule. We request comment on the appropriateness of providing a fuel analysis alternative to HAP metals testing for direct-fired process units that use fuels other than natural gas and propane.

3. Calculation of Average Stack Height

The look-up table analysis described in appendix B to subpart DDDD relies on calculation of average stack height. There are some near-ground-level emission points at PCWP facilities. The near-ground-level emission points generally contain small amounts of HAP as compared to higher-level emission points. Stakeholders have expressed concern that inclusion of numerous near-ground-level emission points in the average stack height calculation would unreasonably lower the average stack height to be used in the look-up tables. As a result, we are proposing to amend appendix B to subpart DDDD to incorporate weighted-average stack height calculations for use in the carcinogen and non-carcinogen look-up tables. We are proposing to add two equations to section 6(a) of appendix B to subpart DDDD. The weighted-average stack heights would be based on the toxicity-weighted carcinogen emission rate (TWCER) and toxicity-weighted non-carcinogen emission rate (TWNER). Separate weighted-average stack heights, the carcinogen weighted-

average stack height (WAHC) and non-carcinogen weighted-average stack height (WAHN), would be developed for use in the carcinogen and non-carcinogen look-up tables, respectively. The weighted-average stack height would be minimally affected by emission points with toxicity-weighted emission rates that are low relative to the total toxicity-weighted emission rate at the source. The weighted-average stack height will usually be higher than the stack height calculated using a straight average (as promulgated), except in unlikely cases where the higher-emitting sources are closer to the ground than the lower-emitting sources. If the higher-emitting sources are closer to the ground, then the weighted-average stack height will be lower (*i.e.*, more conservative) than a straight average (as promulgated). We believe that use of a weighted-average stack height calculation will result in a more accurate picture of the potential risk from an affected source than a straight average.

4. Permit and Timing Issues

Date for New Sources To Submit Low-risk Demonstrations. Section 10(c) of appendix B to subpart DDDD requires new or reconstructed affected sources to conduct emissions tests upon initial startup and to use the results of these emissions tests to complete and submit the low-risk demonstration within 180 days following the initial startup date. While this schedule is appropriate for new or reconstructed sources starting up after the effective date, it is not feasible for new or reconstructed sources starting up prior to the effective date because these sources could not have known what the testing requirements were for the low-risk demonstration. Therefore, we are proposing to amend section 10(c) to state that new or reconstructed sources must conduct emissions tests by the effective date or upon initial startup, whichever is later. We are also proposing to amend section 10(c) to state that new or reconstructed sources must submit their low-risk demonstration within 180 days following the effective date or initial startup date, whichever is later.

Date for Existing Sources To Submit Low-risk Demonstrations. Section 10(a) of appendix B to subpart DDDD requires existing sources to complete and submit their low-risk demonstrations no later than July 31, 2006. We are proposing to change the submittal date to April 1, 2007.

We understand that proposing to extend the deadline for sources to submit low-risk demonstrations may have implications for other deadlines under the PCWP rule. For example, in cases where we disapprove a source's timely-submitted demonstration, a source may have little remaining time to install any controls needed to comply with MACT. Therefore, we seek comment on whether to extend the MACT compliance date by some period of time such as six months to one year for sources whose low-risk demonstrations we disapprove or for all PCWP sources.

Timing of Title V Permit Revisions. To become part of the low-risk subcategory, section 11 of appendix B to subpart DDDD requires facilities to obtain: (1) EPA approval of their low-risk demonstrations, and (2) title V permit revisions including terms and conditions reflecting the parameters used in their approved demonstrations, according to the schedules in their applicable 40 CFR part 70 or 40 CFR part 71 title V permit programs. Unless and until EPA finds that these criteria are met, a facility is subject to the applicable compliance options, operating requirements, and work practice requirements in 40 CFR part 63, subpart DDDD. Thus, low-risk facilities wishing to avoid MACT applicability must meet the criteria for becoming part of the low-risk subcategory before the MACT compliance date. There has been some confusion and concern regarding the timing of the required title V permit revisions. Stakeholders expressed concern that some permitting authorities may be unable to approve title V permit revisions before the MACT compliance date. According to appendix B to subpart DDDD, as promulgated, low-risk demonstrations for existing sources are due to EPA 14 months prior to the MACT compliance date. Facilities would apply for permit revisions following EPA approval of their low-risk demonstration, leaving a year or less for permitting authorities to approve the permit revision.

In the final appendix B to subpart DDDD (section 11(b)), we included the statement ''You must submit an application for a significant permit modification to reopen your title V permit to incorporate such terms and conditions according to the procedures and schedules of 40 CFR part 71 or the EPA-approved program in effect under 40 CFR part 70, as applicable.'' With this language, we intended to consider an application for permit revision submitted prior to the MACT compliance date sufficient for meeting the requirement applicable to the source to initiate action to revise the title V permit to incorporate the parameters that rendered the facility part of the low-risk subcategory. To clarify that it is sufficient to have submitted an application for a permit revision, we are proposing to amend section 11(b) of appendix B to subpart DDDD to state that the parameters that define your affected source as part of the low-risk subcategory must be submitted for incorporation as federally enforceable terms and conditions into your title V permit. We are also retaining the sentence quoted above from section 11(b) of appendix B to subpart DDDD.

5. Using Preliminary Data in the Low-Risk Demonstration

Industry stakeholders requested that EPA allow facilities to submit low-risk demonstrations based on proposed physical changes to emission points. A facility would not be required to install controls, make stack modifications, or make other modifications prior to approval of the low-risk demonstration. All changes would have to be completed for the facility to become part of the low-risk subcategory. In addition, we would require facilities to verify that emissions do not exceed the emission factor calculations presented in the low-risk demonstration by conducting emissions tests. The facility would then submit documentation to EPA that the physical changes and emissions tests were completed. Allowing facilities to complete physical changes after getting approval of the low-risk demonstration would not diminish the accuracy of the risk assessment. However, it will provide facilities some assurance that their low-risk demonstration will be approved before they embark on costly equipment reconfiguration, and it will allow more time to make the changes. We request comment on this approach.

The industry stakeholders also requested that for emission points that require emissions testing, facilities have the option of using emission factors in their low-risk demonstrations, pending subsequent verification. The facility could choose to submit their low-risk demonstration earlier than required and receive feedback on its approvability from EPA before conducting emissions tests. The facility would then verify the results of the low-risk demonstration by performing emissions tests and submitting them to EPA for review and approval no later than the date low-risk submittals are due and prior to becoming part of the low-risk subcategory. Allowing the use of emission factors in the low-risk demonstrations would allow facilities the opportunity to use the alternatives to emissions testing included in today's proposed amendments; save facilities the cost of emissions testing should their risk assessment not be approved by

EPA; and allow facilities more time to complete emissions testing. If the emissions tests do not support the low-risk demonstration, the facility cannot become part of the low-risk subcategory. We request comment on this approach.

C. Other Amendments to the Rule

In addition to the proposed changes to address issues raised by stakeholders, we are proposing other changes to clarify requirements and correct errors.

1. Unscheduled Startups and Shutdowns

Section 63.2250(a) of subpart DDDD, as promulgated, stated that ''* * * The compliance options, operating requirements, and work practice requirements do not apply during times when the process unit(s) subject to the compliance options, operating requirements, and work practice requirements are not operating, or during scheduled startup and shutdown periods, and during malfunctions. These startup and shutdown periods must not exceed the minimum amount of time necessary for these events.'' This language has resulted in confusion about applicability of the rule requirements during unscheduled startup and shutdown periods. Unscheduled startups and shutdowns resulting from malfunction events were always intended to be allowed as part of the startup, shutdown, and malfunction plan (SSM plan) (see discussions in 2.8.3.2 and 2.8.3.5 of the ''National Emission Standards for Hazardous Air Pollutants for Plywood and Composite Wood Products Manufacturing—Background Information for Final Standards''). With this proposed amendment, we are clarifying our intent that the rule requirements do not apply during unscheduled startups and shutdowns covered under the SSM plan. We are proposing to amend the language in § 63.2250(a) accordingly.

2. Numbering in Appendix A to Subpart DDDD

As promulgated, section 10 of appendix A to subpart DDDD (the tracer gas method for measuring capture efficiency) contained two sections numbered 10.4. We are proposing to correct this error by renumbering the second section 10.5.

3. Website Address for ''Air Toxics Risk Assessment Reference Library''

As promulgated, section 7(a) of appendix B to subpart DDDD stated that the ''Air Toxics Risk Assessment Reference Library'' was available from *http://www.epa.gov/ttn/atw*. However, the document is located at a different Web site: *http://www.epa.gov/ttn/fera/risk_atra_main.html*. We are proposing to correct the Web site address in section 7(a) of appendix B to subpart DDDD.

4. Lookup Table Units of Measure

As promulgated, tables 3 and 4 to appendix B of subpart DDDD (the lookup tables for carcinogenic and noncarcinogenic effects, respectively) contained footnotes stating the units of measure to which the values in the lookup tables were normalized. These footnotes have been a source of confusion and are not needed, given that the units are included in the table titles. Therefore, we are proposing to remove the footnotes relating to units of measure from tables 3 and 4 of appendix B to subpart DDDD.

5. Lookup Table Reference to ''Property Boundary''

As promulgated, table 3 to appendix B to subpart DDDD referred to the ''distance to nearest residence.'' However, like table 4 to appendix B to subpart DDDD, table 3 should refer to the ''distance to property boundary.'' We are proposing to correct this error so that table 3 to appendix B to subpart DDDD also refers to ''distance to property boundary.''

6. Numbering in Section 63.2269(c)

Section 63.2269(c), as promulgated, stated that for wood moisture monitoring, ''you must meet the requirements in paragraphs (a)(1), (2), (4) and (5) and paragraphs (c)(1) through (4) of this section.'' However, section 63.2269(a) has only three paragraphs. We are proposing to correct this error by amending section 63.2269(c) so that the paragraphs in section 63.2269(a) are referenced correctly and to include reference to section 63.2269(c)(5).

V. Additional Clarifications

A. Integrated Drying Systems Where Combustion Units That Heat the Dryers Are Used as Control Devices

There has been some confusion regarding applicability of the final PCWP and Boilers/Process Heaters rules to integrated drying systems where a combustion unit provides indirect heat to the dryers and also serves as the control device for the dryers. In these systems, exhaust from a large combustion unit is used to indirectly heat ambient air or generate steam (to be used as heat for the dryers) and to provide indirect heat for other operations (*e.g.*, to generate steam or heat hot oil for the press). After these indirect heat exchanges, the exhaust from the combustion unit is emitted to the atmosphere through a particulate control device. The dryer exhaust is routed to the combustion unit for emissions control.

The final Boilers/Process Heaters rule states that any boiler or process heater specifically listed as an affected source in another standard under 40 CFR part 63 is not subject to the Boilers/Process Heaters rule (see section 63.7491(l)). The Boilers/Process Heaters rule does not exclude boilers and process heaters that are used as control devices unless they are specifically considered part of another NESHAP's definition of affected source. (See 69 FR 55230, September 13, 2004.) We received questions regarding whether combustion units in integrated drying systems (described previously in this section) are part of the PCWP affected source. The definition of ''affected source'' in the PCWP final rule does not mention combustion units used as control devices. As stated previously, there are combustion units that can be part of the PCWP affected source and also be Boilers/Process Heaters affected sources. Combustion units in integrated drying systems (as described in this section) are part of the Boilers/Process Heaters affected source because they meet the definition of ''process heater'' in the Boilers/Process Heaters final rule in that they ''* * * transfer heat indirectly to a process material (liquid, gas, or solid) or to a heat transfer material for use in a process unit * * *''

B. Applicability of the PCWP Rule to Hot Pressing of Veneers Onto a Substrate

We received several questions regarding applicability of the PCWP final rule to operations where hardwood or softwood veneer is hot-pressed with resin onto a substrate (such as lumber, particleboard, MDF, etc.) to form a panel product. Such operations may be located at facilities that are major sources because they produce other products (*e.g.*, furniture). The definition of ''plywood'' in the final PCWP rule is as follows: ''Plywood means a panel product consisting of layers of wood veneers hot pressed together with resin. Plywood includes panel products made by hot pressing (with resin) veneers to a substrate such as particleboard, medium density fiberboard, or lumber.'' Thus, the pressing operation described above is considered to be plywood manufacturing according to the definition of ''plywood.'' However, there are no control requirements or work practice requirements for plywood pressing operations in the final PCWP rule. Thus, facilities hot pressing products that meet the definition of plywood in the final rule (but have no

other operations subject to the control, work practice, or operating requirements in the final PCWP rule) need only to submit an initial notification stating that they have no equipment subject to the rule (as discussed earlier in this preamble).

C. Applicability of the PCWP Rule to Lumber Kilns Drying Utility Poles

As discussed in the preamble to the final PCWP rule, (69 FR 45948 and 45962) the PCWP affected source includes lumber kilns located at any type of facility, regardless of whether the facility manufactures PCWP. We determined that MACT for lumber kilns is no emission reduction. Therefore, the only requirements in the PCWP final rule for major source facilities with no PCWP process units other than lumber kilns is to submit an initial notification.

Following promulgation of the PCWP rule, we received questions regarding applicability of subpart DDDD of 40 CFR part 63 to lumber kilns used to dry utility poles. We believe that there may be a number of facilities that dry utility poles in lumber kilns, that the operations are similar to other lumber kiln operations, and that they are part of the PCWP affected source. However, because drying of utility poles in lumber kilns was not considered prior to promulgation of the PCWP rule, we request comment and data to support a determination of whether the PCWP rule should include drying of utility poles in lumber kilns.

Specifically, we request comment on the physical and operational similarities and differences in lumber kilns used to dry sawn lumber and utility poles in terms of kiln design, wood moisture content, drying temperatures, and emissions characteristics. We also request comment on whether the final PCWP rule should be amended to include a definition of ''lumber,'' to be used with the definition of ''lumber kiln'' in the final rule, and if so, suggestions for a definition of ''lumber.'' For example, one broad definition of lumber could be: ''Lumber'' means green (undried) timber sawed or split into planks or boards, green timber cut or sanded into wood components, and green timber processed for use as utility poles).

VI. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), EPA must determine whether the regulatory action is ''significant'' and, therefore, subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The Executive Order defines a ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlement, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that today's proposed amendments are a ''significant regulatory action'' because they raise novel legal or policy issues. As such, the proposed amendments were submitted to OMB for review under Executive Order 12866. Changes made in response to OMB suggestions or recommendations are documented in the public record (see **ADDRESSES** section of this preamble).

B. Paperwork Reduction Act

This action does not impose any new information collection burden. We are not proposing any new paperwork (*e.g.*, monitoring, reporting, recordkeeping) as part of today's notice. With this action we are seeking additional comments on some of the provisions finalized in the July 2004 **Federal Register** Notice (69 FR 45943). However, OMB has previously approved the information collection requirements contained in the existing regulations (40 CFR part 63) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and has assigned OMB control number 2060–0552, EPA ICR number 1984.02. A copy of the OMB approved Information Collection Request (ICR) may be obtained from Susan Auby, Collection Strategies Division; EPA (2822T); 1200 Pennsylvania Ave., NW., Washington, DC 20460 or by calling (202) 566–1672.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

For purposes of assessing the impacts of today's proposed amendments on small entities, a small entity is defined as: (1) A small business having no more than 500 to 750 employees, depending on the business' NAICS code; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and that is not dominant in its field.

After considering the economic impacts of today's proposed amendments on small entities, I certify that the proposed amendments will not have a significant economic impact on a substantial number of small entities.

In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant *adverse* economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives ''which minimize any significant economic impact of the rule on small entities.'' 5 U.S.C. 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory

burden, or otherwise has a positive economic effect on all of the small entities subject to the rule. Today's proposed amendments significantly reduce the number of emissions tests (and costs associated with these tests) required for facilities to demonstrate that they are part of the low-risk subcategory. We continue to be interested in the potential impacts of the proposed amendments on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least-burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least-costly, most cost-effective, or least-burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed, under section 203 of the UMRA, a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA's regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that today's proposed amendments do not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. Although the final rule had annualized costs estimated to range from $74 to $140 million (depending on the number of facilities eventually demonstrating eligibility for the low-risk subcategory), the proposed amendments do not add new requirements that would increase this cost. Thus, today's proposed amendments are not subject to the requirements of sections 202 and 205 of the UMRA. In addition, EPA has determined that the proposed amendments do not significantly or uniquely affect small governments because they contain no requirements that apply to such governments or impose obligations upon them. Therefore, today's proposed amendments are not subject to section 203 of the UMRA.

E. Executive Order 13132: Federalism

Executive Order 13132 (64 FR 43255, August 10, 1999) requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' are defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless it consults with State and local officials early in the process of developing the proposed regulation.

If EPA complies by consulting, Executive Order 13132 requires EPA to provide to OMB, in a separately identified section of the preamble to the rule, a federalism summary impact statement (FSIS). The FSIS must include a description of the extent of EPA's prior consultation with State and local officials, a summary of the nature of their concerns and EPA's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of State and local officials have been met. Also, when EPA transmits a draft final rule with federalism implications to OMB for review pursuant to Executive Order 12866, EPA must include a certification from its Federalism Official stating that EPA has met the requirements of Executive Order 13132 in a meaningful and timely manner.

Today's proposed amendments do not have federalism implications. They will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. None of the affected facilities are owned or operated by State governments, and the requirements of the proposed amendments will not supersede State regulations that are more stringent. Thus, Executive Order 13132 does not apply to today's proposed amendments.

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

Executive Order 13175 (65 FR 67249, November 6, 2000) requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' are defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.''

Today's proposed amendments do not have tribal implications. They will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. No affected facilities are owned or operated by Indian tribal governments. Thus, Executive Order 13175 does not apply to today's proposed amendments.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant,'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a

disproportionate effect on children. If the regulatory action meets both criteria, EPA must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by EPA.

Today's proposed amendments are not subject to the Executive Order because EPA does not believe that the environmental health or safety risks associated with the emissions addressed by the proposed amendments present a disproportionate risk to children. The noncancer human health toxicity values we used in our analysis at promulgation (*e.g.*, reference concentrations) are protective of sensitive subpopulations, including children. In addition, for purposes of this rulemaking, EPA has not determined that any of the pollutants in question has the potential for a disproportionate impact on predicted cancer risks due to early-life exposure.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

Executive Order 13211 (66 FR 28355, May 22, 2001) provides that agencies shall prepare and submit to the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, a Statement of Energy Effects for certain actions identified as ''significant energy actions.'' Section 4(b) of Executive Order 13211 defines ''significant energy actions'' as ''any action by an agency (normally published in the **Federal Register**) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking: (1)(i) That is a significant regulatory action under Executive Order 12866 or any successor order, and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action.'' Today's proposed amendments are not a ''significant energy action'' as defined in Executive Order 13211 (66 FR 28355, May 22, 2001) because they are not likely to have a significant adverse effect on the supply, distribution, or use of energy. Further, we have concluded that today's proposed amendments are not likely to have any adverse energy effects.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995 (Pub. L. 104–113, Section 12(d), 15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in their regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, business practices) developed or adopted by one or more voluntary consensus bodies. The NTTAA directs EPA to provide Congress, through annual reports to the Office of Management and Budget (OMB), with explanations when an agency does not use available and applicable voluntary consensus standards.

These amendments involve a technical standard. EPA cites the following standard in this rulemaking: National Council for Air and Stream Improvement, Inc. (NCASI), draft method ISS/FP–A105.01 (2/05), ''Impinger Source Sampling Method for Aldehydes, Ketones, And Polar Compounds.''

Consistent with the NTTAA, EPA conducted searches to identify voluntary consensus standards in addition to this method. One voluntary consensus standard was found that is potentially applicable to the NCASI method. This standard is not acceptable as an alternative to the NCASI method, for the reasons stated below.

The German standard VDI 3862 (12/00), ''Gaseous Emission Measurement-Measurement of Aliphatic and Aromatic Aldehydes and Ketones by 2,4-Dinitrophenyhydrazine (DNPH) Impinger Method,'' is a good impinger method for the sampling and analysis of aldehydes and ketones that includes the use of an external standard, field and analytical blanks, and repeatability tests. However, the VDI method is missing some key quality assurance/quality control (QA/QC) procedures that are included in the NCASI method. Specifically, VDI 3862 (12/00) is missing the use of internal standards, matrix spikes, and surrogate standards in the analytical step, as well as a duplicate sample run requirement, and sampling train QA/QC samples such as field, run, and sampling train spikes. Therefore, this VDI method, as written, is not acceptable as an alternative to the draft NCASI method for the purposes of this rule amendment.

Table 4 to subpart DDDD of 40 CFR part 63 and table 2B to appendix B to subpart DDDD of 40 CFR part 63 in this amendment list the testing method included in the regulation. Under §§ 63.7(f) and 63.8(f) of subpart A of the General Provisions, a source may apply to EPA for permission to use alternative test methods or alternative monitoring requirements in place of any required testing methods, performance specifications, or procedures.

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: July 18, 2005.

Stephen L. Johnson,

Administrator.

For the reasons stated in the preamble, title 40, chapter I, part 63 of the Code of Federal Regulations is proposed to be amended as follows:

PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

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

Subpart A—[Amended]

2. Section 63.14 is amended by adding paragraph (f)(4) to read as follows:

§ 63.14 Incorporation by reference.

* * * * *

(f) * * *

(4) NCASI Method ISS/FP–A105.01, Impinger Source Sampling Method for Selected Aldehydes, Ketones, and Polar Compounds, 2005, NCASI, Research Triangle Park, NC, IBR proposed to be approved for table 4 to subpart DDDD of this part and appendix B to subpart DDDD of this part.

* * * * *

Subpart DDDD—National Emission Standards for Hazardous Air Pollutants: Plywood and Composite Wood Products

3. Revise paragraph (b) of § 63.2232 to read as follows:

§ 63.2232 What parts of my plant does this subpart cover?

* * * * *

(b) The affected source is the collection of dryers, refiners, blenders, formers, presses, board coolers, and other process units associated with the manufacturing of plywood and composite wood products. The affected source includes, but is not limited to, green end operations, refining, drying

operations (including any combustion unit exhaust stream routinely used to direct fire process unit(s)), resin preparation, blending and forming operations, pressing and board cooling operations, and miscellaneous finishing operations (such as sanding, sawing, patching, edge sealing, and other finishing operations not subject to other National Emission Standards for Hazardous Air Pollutants (NESHAP)). The affected source also includes onsite storage and preparation of raw materials used in the manufacture of plywood and/or composite wood products, such as resins; onsite wastewater treatment operations specifically associated with plywood and composite wood products manufacturing; and miscellaneous coating operations (§ 63.2292). The affected source includes lumber kilns at PCWP manufacturing facilities and at any other kind of facility.

* * * * *

4. Revise paragraph (a) of § 63.2250 to read as follows:

§ 63.2250 What are the general requirements?

(a) You must be in compliance with the compliance options, operating requirements, and the work practice requirements in this subpart at all times, except during periods of process unit or control device startup, shutdown, and malfunction; prior to process unit initial startup; and during the routine control device maintenance exemption specified in § 63.2251. The compliance options, operating requirements, and work practice requirements do not apply during times when the process unit(s) subject to the compliance options, operating requirements, and work practice requirements are not operating, or during scheduled startup and shutdown periods, and during malfunctions, including unscheduled startups and shutdowns resulting from malfunctions. Startup and shutdown periods must not exceed the minimum amount of time necessary for these events.

* * * * *

5. Add section 63.2252 to read as follows:

§ 63.2252 What are the requirements for process units that have no control or work practice requirements?

For process units not subject to the compliance options or work practice requirements specified in § 63.2240 (including, but not limited to, lumber kilns), you are not required to comply with the compliance options, work practice requirements, performance testing, monitoring, SSM plans, and recordkeeping or reporting requirements of this subpart, or any other requirements in subpart A of this part, except for the initial notification requirements in § 63.9(b).

6. Revise paragraph (d)(1) of § 63.2262 to read as follows:

§ 63.2262 How do I conduct performance tests and establish operating requirements?

* * * * *

(d) * * *

(1) Sampling sites must be located at the inlet (if emission reduction testing or documentation of inlet methanol or formaldehyde concentration is required) and outlet of the control device (defined in § 63.2292) and prior to any releases to the atmosphere. For control sequences with wet control devices (defined in § 63.2292) followed by control devices (defined in § 63.2292), sampling sites may be located at the inlet and outlet of the control sequence and prior to any releases to the atmosphere.

* * * * *

7. Revise paragraph (c) introductory text of § 63.2269 to read as follows:

§ 63.2269 What are my monitoring installation, operation, and maintenance requirements?

* * * * *

(c) *Wood moisture monitoring.* For each furnish or veneer moisture meter, you must meet the requirements in paragraphs (a)(1) through (3) and paragraphs (c)(1) through (5) of this section.

* * * * *

8. In § 63.2292, revise the definitions for ''affected source,'' ''plywood,'' ''plywood and composite wood products manufacturing facility,'' and ''tube dryer'' and add definitions for ''direct-fired process unit,'' ''engineered wood product,'' and ''molded particleboard'' to read as follows:

§ 63.2292 What definitions apply to this subpart?

* * * * *

Affected source means the collection of dryers, refiners, blenders, formers, presses, board coolers, and other process units associated with the manufacturing of plywood and composite wood products. The affected source includes, but is not limited to, green end operations, refining, drying operations (including any combustion unit exhaust stream routinely used to direct fire process unit(s)), resin preparation, blending and forming operations, pressing and board cooling operations, and miscellaneous finishing operations (such as sanding, sawing, patching, edge sealing, and other finishing operations not subject to other NESHAP). The affected source also includes onsite storage of raw materials used in the manufacture of plywood and/or composite wood products, such as resins; onsite wastewater treatment operations specifically associated with plywood and composite wood products manufacturing; and miscellaneous coating operations (defined elsewhere in this section). The affected source includes lumber kilns at PCWP manufacturing facilities and at any other kind of facility.

* * * * *

Direct-fired process unit means a process unit that is heated by the passing of combustion exhaust directly through the process unit such that the process material is contacted by the combustion exhaust.

* * * * *

Engineered wood product means a product made with lumber, veneers, strands of wood, or from other small wood elements that are bound together with resin (including polyvinyl acetate (PVA) resin or hot melt glue). Engineered wood products are generally designed for use in the same applications as sawn lumber. Engineered wood products include, but are not limited to, laminated strand lumber, laminated veneer lumber, wood I-joists, and glue-laminated beams.

* * * * *

Molded particleboard means a shaped composite product (other than a composite panel) composed primarily of cellulosic materials (usually wood or agricultural fiber) generally in the form of discrete pieces or particles, as distinguished from fibers, which are pressed together with resin.

* * * * *

Plywood means a panel product consisting of layers of wood veneers hot pressed together with resin. Plywood includes panel products made by hot pressing (with resin) veneers to a substrate such as particleboard, medium density fiberboard, or lumber. Plywood products may be flat or curved.

Plywood and composite wood products (PCWP) manufacturing facility means a facility that manufactures plywood and/or composite wood products by bonding wood material (fibers, particles, strands, veneers, etc.) or agricultural fiber, generally with resin under heat and pressure, to form a panel, engineered wood product, or other product defined in § 63.2292. Plywood and composite wood products manufacturing facilities also include facilities that manufacture dry veneer and lumber kilns located at any facility. Plywood and composite wood products

include, but are not limited to, plywood, veneer, particleboard, molded particleboard, oriented strandboard, hardboard, fiberboard, medium density fiberboard, laminated strand lumber, laminated veneer lumber, wood I-joists, kiln-dried lumber, and glue-laminated beams.

* * * * *

Tube dryer means a single-stage or multi-stage dryer operated by applying heat to reduce the moisture of wood fibers or particles as they are conveyed (usually pneumatically) through the dryer. Resin may or may not be applied to the wood material before it enters the tube dryer. A *tube dryer* is a process unit.

* * * * *

9. Revise Table 4 to Subpart DDDD of Part 63 to read as follows:

TABLE 4 TO SUBPART DDDD OF PART 63.—REQUIREMENTS FOR PERFORMANCE TESTS

For . . .	You must . . .	Using . . .
1. Each process unit subject to a compliance option in table 1A or 1B to this subpart or used in calculation of an emissions average under § 63.2240(c).	Select sampling port's location and the number of traverse ports.	Method 1 or 1A of 40 CFR part 60, appendix A (as appropriate).
2. Each process unit subject to a compliance option in table 1A or 1B to this subpart or used in calculation of an emissions average under § 63.2240(c).	Determine velocity and volumetric flow rate	Method 2 in addition to Method 2A, 2C, 2D, 2F, or 2G in appendix A to 40 CFR part 60 (as appropriate).
3. Each process unit subject to a compliance option in table 1A or 1B to this subpart or used in calculation of an emissions average under § 63.2240(c).	Conduct gas molecular weight analysis	Method 3, 3A, or 3B in appendix A to 40 CFR part 60 (as appropriate).
4. Each process unit subject to a compliance option in table 1A or 1B to this subpart or used in calculation of an emissions average under § 63.2240(c).	Measure moisture content of the stack gas	Method 4 in appendix A to 40 CFR part 60; OR Method 320 in appendix A to 40 CFR part 63; OR ASTM D6348–03 (IBR, option in table see § 63.14(b))
5. Each process unit subject to a compliance option in table 1B to this subpart for which you choose to demonstrate compliance using a total HAP as THC compliance option.	Measure emissions of total HAP as THC	Method 25A in appendix A to 40 CFR part 60. You may measure emissions of methane using EPA Method 18 in appendix A to 40 CFR part 60 and subtract the methane emissions from the emissions of total HAP as THC.
6. Each process unit subject to a compliance option in table 1A to this subpart; OR for each process unit used in calculation of an emissions average under § 63.2240(c).	Measure emissions of total HAP (as defined in § 63.2292).	Method 320 in appendix A to 40 CFR part 63; OR the NCASI Method IM/CAN/WP–99.02 (IBR, see § 63.14(f)); OR the NCASI Method ISS/WP–A105.01 (IBR, see § 63.14(f)); OR ASTM D6348–03 (IBR, see § 63.14(b)) provided that percent R as determined in Annex A5 of ASTM D6348–03 is equal or greater than of 70 percent and less than or equal to 130 percent.
7. Each process unit subject to a compliance option in table 1B to this subpart for which you choose to demonstrate compliance using a methanol compliance option.	Measure emissions of methanol	Method 308 in appendix A to 40 CFR part 63; OR Method 320 in appendix A to 40 CFR part 63; OR the NCASI Method CI/WP–98.01 (IBR, see § 63.14(f)); OR the NCASI Method IM/CAN/WP–99.02 (IBR, see § 63.14(f)); OR the NCASI Method ISS/WP-A105.01 (IBR, see § 63.14(f)).
8. Each process unit subject to a compliance option in table 1B to this subpart for which you choose to demonstrate compliance using a formaldehyde compliance option.	Measure emissions of formaldehyde	Method 316 in appendix A to 40 CFR part 63; OR Method 320 in appendix A to 40 CFR part 63; OR Method 0011 in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" (EPA Publication No. SW–846) for formaldehyde; OR the NCASI Method CI/WP–98.01 (IBR, see § 63.14(f)); OR the NCASI Method IM/CAN/WP–99.02 (IBR, see § 63.14(f)); OR the NCASI Method ISS/WP–A105.01 (IBR, see § 63.14(f)).

TABLE 4 TO SUBPART DDDD OF PART 63.—REQUIREMENTS FOR PERFORMANCE TESTS—Continued

For . . .	You must . . .	Using . . .
9. Each reconstituted wood product press at a new or existing affected source or reconstituted wood product board cooler at a new affected source subject to a compliance option in table 1B to this subpart or used in calculation of an emissions average under § 63.2240(c).	Meet the design specifications included in the definition of wood products enclosures in § 63.2292) or, determine the percent capture efficiency of the enclosure directing emissions to an add-on control device.	Methods 204 and 204A through 204F of 40 CFR part 51, appendix M, to determine capture efficiency (except for wood products enclosures as defined in § 63.2292). Enclosures that meet the definition of wood products enclosure or that meet Method 204 requirements for a permanent total enclosure (PTE) are assumed to have a capture efficiency of 100 percent. Enclosures that do not meet either the PTE requirements or design criteria for a wood products enclosure must determine the capture efficiency by constructing a TTE according to the requirements of Method 204 and applying Methods 204A through 204F (as appropriate). As an alternative to Methods 204 and 204A through 204F, you may use the tracer gas method contained in appendix A to this subpart.
10. Each reconstituted wood product press at a new or existing affected source or reconstituted wood product board cooler at a new affected source subject to a compliance option in table 1A to this subpart.	Determine the percent capture efficiency	A TTE and Methods 204 and 204A through 204F (as appropriate) of 40 CFR part 51, appendix M. As an alternative to installing a TTE and using Methods 204 and 204A through 204F, you may use the tracer gas method contained in appendix A to this subpart. Measured emissions divided by the capture efficiency provides the emission rate.
11. Each process unit subject to a compliance option in tables 1A and 1B to this subpart or used in calculation of an emissions average under § 63.2240(c).	Establish the site-specific operating requirements (including the parameter limits or THC concentration limits) in table 2 to this subpart.	Data from the parameter monitoring system or THC CEMS and the applicable performance test methods(s).

* * * * *

Appendix A to Subpart DDDD of Part 63—Alternative Procedure To Determine Capture Efficiency From Enclosures Around Hot Presses in the Plywood and Composite Wood Products Industry Using Sulfur Hexafluoride Tracer Gas

10. Revise paragraphs 10.4 and 10.5 of section 10 to read as follows:

10.0 Calibration and Standardization.

* * * * *

10.4 Gas Chromatograph. Follow the pretest calibration requirements specified in section 8.5.1.

10.5 Gas Chromatograph for Ambient Sampling (Optional). For the optional ambient sampling, follow the calibration requirements specified in section 8.5.1 or ASTM E 260 and E 697 and by the equipment manufacturer for gas chromatograph measurements.

Appendix B to Subpart DDDD of Part 63—Methodology and Criteria for Demonstrating That an Affected Source Is Part of the Low-Risk Subcategory of Plywood and Composite Wood Products Manufacturing Affected Sources

11. In section 4, revise paragraph (a) to read as follows:

4. What are the criteria for determining if my affected source is low risk?

(a) Determine the individual HAP emission rates from each process unit emission point within the affected source using the procedures specified in section 5 of this appendix.

* * * * *

12. In section 5, revise paragraphs (a), (f)(1), and (f)(2) and add paragraphs (i) through (k) to read as follows:

5. How do I determine HAP emissions from my affected source?

(a) You must determine HAP emissions for every process unit emission point within the affected source that emits one or more of the HAP listed in Table 1 to this appendix as specified in Table 2A to this appendix. For each process unit type, Table 2A to this appendix specifies whether emissions testing is required or if emissions estimation is allowed as an alternative to emissions testing. If emissions estimation is allowed according to Table 2A, you must develop your emission estimates according to the requirements in paragraph (k) of this section. You may choose to perform emissions testing instead of emissions estimation. You must conduct HAP emissions tests according to the requirements in paragraphs (b) through (j) of this section and the methods specified in Table 2B to this appendix. For each of the emission points at your affected source, you must obtain the emission rates in pounds per hour (lb/hr) for each of the pollutants listed in Table 1 to this appendix.

* * * * *

(f) * * *

(1) The method detection limit is less than or equal to 1 part per million by volume, dry (ppmvd) for pollutant emissions measured using Method 320 in appendix A to 40 CFR part 63; or Method 18 in appendix A to 40 CFR part 60; or the NCASI Method IM/CAN/WP–99.02 (incorporated by reference (IBR), see 40 CFR 63.14(f)); or NCASI Method ISS/FP–A105.01 (IBR, see 40 CFR 63.14(f); or ASTM D6348–03 (IBR, see 40 CFR 63.14(b)).

(2) For pollutants measured using Method 29 in appendix A to 40 CFR part 60, you analyze samples using atomic absorption spectroscopy (AAS) or another laboratory method specified in Method 29 in appendix A to 40 CFR part 60 with detection limits lower than or equal to AAS.

* * * * *

(i) *Use of previous emissions tests.* You may use the results of previous emissions tests provided that the following conditions are met:

(1) The previous emissions tests must have been conducted using the methods specified in Table 2B to this appendix. Previous emission test results obtained using NCASI Method IM/CAN/WP–99.01 are acceptable.

(2) The previous emissions tests must meet the requirements in paragraphs (b) through (j) of this section.

(3) The subject process unit(s) must be operated in the same manner (*e.g.*, same raw material type, same operating temperature,

etc.) as during the previous emissions test(s) and the process unit(s) may not have been modified such that emissions would be expected to differ (notwithstanding normal test-to-test variability) from the previous emissions test(s).

(j) *Use of test data for similar process units.* If you have multiple similar process units at the same plant site, you may apply the test results from one of these process units to the other similar process units for purposes of your low-risk demonstration provided that the following conditions are met:

(1) You must explain how the process units are similar in terms of design, function, heating method, raw materials processed, residence time, change in material moisture content, operating temperature, resin type processed, and any other parameters that may affect emissions.

(2) If the process units have different throughput rates, then you must convert the emission test results to terms of pounds of HAP per unit throughput prior to applying the emissions test data to other similar process units.

(3) If one of the process units would be expected to exhibit higher emissions due to minor differences in process parameters, then you must explain and test the process unit that would be expected to exhibit greater emissions (for example, the unit with a slightly higher temperature set point, dryer processing furnish with slightly higher inlet moisture content, press processing thicker panels, unit with the greater throughput, etc.).

(k) If emissions estimation is allowed, you must follow the procedures in (1) through (3) of this paragraph.

(1) You must use the emission factors or other emission estimation techniques specified in Table 2A to this appendix when developing emission estimates.

(2) You must base your emission estimates on the maximum process unit throughput you will incorporate into your permit according to section 11(b) of this appendix.

(3) For process units with multiple emission points, you must apportion the estimate emissions evenly across each emission point. For example, if you have a process unit with two emission points, and the process unit is estimated to emit 6 lb/hr, you would assign 3 lb/hr to each emission point.

13. Revise paragraphs (a) through (c) of section 6 to read as follows:

6. How do I conduct a look-up table analysis?

* * * * *

(a) Using the emission rate of each HAP required to be included in your low-risk demonstration (determined according to section 5 of this appendix), calculate your total toxicity-weighted carcinogen and noncarcinogen emission rates for each of your emission points using Equations 1 and 2 of this appendix, respectively. Calculate your carcinogen and non-carcinogen weighted average stack height using Equations 3 and 4 of this appendix, respectively.

$$\mathrm{TWCER} = \sum\left(\mathrm{ER_i} \times \mathrm{URE_i}\right) \qquad \text{Eqn. 1}$$

TWCER = Toxcity-weighted carcinogenic emission rate for each emission point (1b/hr)/(μg/m³)

$\mathrm{ER_i}$ = Emission rate of pollutant I (lb/hr)

URE = Unit risk estimate for pollutant I, 1 per Microgram per cubic meter (μg/m³) − 1

$$\mathrm{TWNER} = \sum\left(\mathrm{ER_i}/\mathrm{RfC_i}\right) \qquad \text{Eqn. 2}$$

TWNER = Toxicity-weighted noncarcinogenic emission rate for each emission point (lb/hr)/(μg/m³)

$\mathrm{ER_i}$ = Emission rate of pollutant I (lb/hr)

$\mathrm{RfC_i}$ = Reference concentration for pollutant I, micrograms per cubic meter (μg/m³)

$$\mathrm{WAHC} = \left[\sum_{ep=1}^{ep=n} \frac{\mathrm{TWCER_{ep}}}{\sum_{ep=1}^{ep=n} \mathrm{TWCER_{ep}}} \times \mathrm{H_{ep}}\right] \qquad \text{Eqn. 3}$$

WAHC = Carcinogen weighted average stack height for use in the carcinogen lookup table (Table 3 to this appendix)

H = Height of each individual stack or emission point (m)

ep = Individual stacks or emission points

n = Total number of stacks and emission points

$$\mathrm{WAHN} = \sum_{ep=1}^{ep=n} \left[\frac{\mathrm{TWNER_{ep}}}{\sum_{ep=1}^{ep=n} \mathrm{TWNER_{ep}}} \times \mathrm{H_{ep}}\right] \qquad \text{Eqn. 4}$$

WAHN = Non-carcinogen weighted average stack height for use in the non-carcinogen lookup table (Table 4 to this appendix)

H = Height of each individual stack or emission point (m)

ep = Individual stacks or emission points

n = Total number of stacks and emission points

(b) *Cancer risk.* Calculate the total toxicity-weighted carcinogen emission rate for your affected source by summing the toxicity-weighted carcinogen emission rates for each of your emission points. Identify the appropriate maximum allowable toxicity-weighted carcinogen emission rate from Table 3 to this appendix for your affected source using the carcinogen weighted average stack height of your emission points and the minimum distance between any emission point at the affected source and the property boundary. If one or both of these values do not match the exact values in the lookup table, then use the next lowest table value. (**Note:** If your weighted average stack height is less than 5 meters (m), you must use the 5 m row.) Your affected source is considered low risk for carcinogenic effects if your toxicity-weighted carcinogen emission rate, determined using the methods specified in this appendix, does not exceed the values specified in Table 3 to this appendix.

(c) *Noncancer risk.* Calculate the total central nervous system (CNS) and respiratory target organ specific toxicity-weighted noncarcinogen emission rate for your affected source by summing the toxicity-weighted emission rates for each of your emission points. Identify the appropriate maximum allowable toxicity-weighted noncarcinogen emission rate from Table 4 to this appendix for your affected source using the non-carcinogen weighted average stack height of your emission points and the minimum distance between any emission point at the affected source and the property boundary. If one or both of these values do not match the exact values in the lookup table, then use the next lowest table value. (**Note:** If your weighted average stack height is less than 5 m, you must use the 5 m row.) Your affected source is considered low risk for noncarcinogenic effects if your toxicity-weighted noncarcinogen emission rate, determined using the methods specified in this appendix, does not exceed the values specified in Table 4 to this appendix.

* * * * *

14. Revise paragraph (a) of section 7 to read as follows:

7. How do I conduct a site-specific risk assessment?

(a) Perform a site-specific risk assessment following the procedures specified in this section. You may use any scientifically-accepted peer-reviewed assessment methodology for your site-specific risk assessment. An example of one approach to performing a site-specific risk assessment for air toxics that may be appropriate for your affected source can be found in the ''Air Toxics Risk Assessment Guidance Reference Library, Volume 2, Site-Specific Risk Assessment Technical Resource Document.'' You may obtain a copy of the ''Air Toxics Risk Assessment Reference Library'' through EPA's air toxics Web site at *http://www.epa.gov/ttn/fera/risk_atra_main.html.*

* * * * *

15. Revise paragraphs (a)(3), (b)(1), and (b)(3) of section 8 to read as follows:

8. What information must I submit for the low-risk demonstration?

(a) * * *

(3) Emission test reports for each pollutant and process unit based on the testing requirements and methods specified in Tables 2A and 2B to this appendix, including a description of the process parameters identified as being worst case. You must submit your emissions calculations for each pollutant and process unit for which emissions estimates are developed.

* * * * *

(b) * * *

(1) Identification of the stack heights for each emission point included in the calculations of weighted average stack height.

* * * * *

(3) Calculations used to determine the toxicity-weighted carcinogen and noncarcinogen emission rates and weighted average stack heights according to section 6(a) of this appendix.

* * * * *

16. Revise paragraphs (a) and (c) of section 10 to read as follows:

10. When do I submit my low-risk demonstration?

* * * * *

(a) If you have an existing affected source, you must complete and submit for approval your low-risk demonstration no later than April 1, 2007. * * *

(c) If you have a new or reconstructed affected source you must conduct the emission tests specified in section 5 of this appendix by September 28, 2004 or upon initial startup (whichever is later) and use the results of these emissions tests to complete and submit your low-risk demonstration within 180 days following September 28, 2004 or your initial startup date (whichever is later). * * *

17. Revise paragraph (b) of section 11 to read as follows:

11. How does my affected source become part of the low-risk subcategory of PCWP facilities?

* * * * *

(b) Following EPA approval, the parameters that defined your affected source as part of the low-risk subcategory (including, but not limited to, production rate, annual emission rate, type of control devices, process parameters reflecting the emissions rates used for your low-risk demonstration) must be submitted for incorporation as federally enforceable terms and conditions into your title V permit. You must submit an application for a significant permit modification to reopen your title V permit to incorporate such terms and conditions according to the procedures and schedules of 40 CFR part 71 or the EPA-approved program in effect under 40 CFR part 70, as applicable.

18. Revise section 15 to read as follows:

15. Definitions.

The definitions in § 63.2292 of 40 CFR part 63, subpart DDDD, apply to this appendix. Additional definitions applicable for this appendix are as follows:

Agricultural fiber board press means a press used in the production of an agricultural fiber based composite wood product. An *agricultural fiber board press* is a process unit.

Agricultural fiberboard mat dryer means a dryer used to reduce the moisture of wet-formed agricultural fiber mats by operation at elevated temperature. An *agricultural fiberboard mat dryer* is a process unit.

Atmospheric refiner means a piece of equipment operated under atmospheric pressure for refining (rubbing or grinding) the wood material into fibers or particles. Atmospheric refiners are operated with continuous infeed and outfeed of wood material and atmospheric pressures throughout the refining process. An *atmospheric refiner* is a process unit.

Blending and forming operations means the process of mixing adhesive and other additives with the (wood) furnish of the composite panel and making a mat of resinated fiber, particles, or strands to be compressed into a reconstituted wood product such as particleboard, oriented strandboard, or medium density fiberboard. *Blending and forming operations* are process units.

Emission point means an individual stack or vent from a process unit that emits HAP required for inclusion in the low-risk demonstration specified in this appendix. Process units may have multiple emission points.

Fiber washer means a unit in which water-soluble components of wood (hemicellulose and sugars) that have been produced during digesting and refining are removed from the wood fiber. Typically wet fiber leaving a refiner is further diluted with water and then passed over a filter, leaving the cleaned fiber on the surface. A *fiber washer* is a process unit.

Finishing sander means a piece of equipment that uses an abrasive drum, belt, or pad to impart smoothness to the surface of a plywood or composite wood product panel and to reduce the panel to the prescribed thickness. A *finishing sander* is a process unit.

Finishing saw means a piece of equipment used to trim or cut finished plywood and composite wood products panels to a certain size. A *finishing saw* is a process unit.

Hardwood plywood press means a hot press which, through heat and pressure, bonds assembled hardwood veneers (including multiple plies of veneer and/or a substrate) and resin into a hardwood plywood panel. A *hardwood plywood press* is a process unit.

Hardwood veneer kiln means an enclosed dryer operated in batch cycles at elevated temperature to reduce the moisture content from stacked hardwood veneer. A *hardwood veneer kiln* is a process unit.

Hazard Index (HI) means the sum of more than one hazard quotient for multiple substances and/or multiple exposure pathways.

Hazard Quotient (HQ) means the ratio of the predicted media concentration of a pollutant to the media concentration at which no adverse effects are expected. For inhalation exposures, the HQ is calculated as the air concentration divided by the reference concentration (RfC).

Humidifier means a process unit used to increase the moisture content of hardboard following pressing or after post-baking. Typically, water vapor saturated air is blown over the hardboard surfaces in a closed cabinet. A *humidifier* is a process unit.

I-joist curing chamber means an oven or a room surrounded by a solid wall or heavy plastic flaps that uses heat, infrared, or radio-frequency techniques to cure the adhesive. An *I-joist curing chamber* is a process unit.

Log chipping means the production of wood chips from logs.

Log vat means a process unit that raises the temperature of the logs inside by applying a heated substance, usually hot water and steam, to the outside of the logs by spraying or soaking. A *log vat* is a process unit.

Look-up table analysis means a risk screening analysis based on comparing the toxicity-weighted HAP emission rate from the affected source to the maximum allowable toxicity-weighted HAP emission rates specified in Tables 3 and 4 to this appendix.

LSL press means a composite wood product press that presses a loose mat of resinated strands into a billet by simultaneous application of heat and pressure and forms laminated strand lumber. An *LSL press* is a process unit.

LVL press means a composite wood product press that presses resinated stacks of veneers into a solid billet by simultaneous application of heat and pressure and forms laminated veneer lumber or parallel strand lumber. An *LVL press* is a process unit.

Natural gas means a naturally occurring mixture of hydrocarbon and non-hydrocarbon gases found in geologic formations beneath the earth's surface. The principal hydrocarbon constituent is methane.

Paddle-type particleboard dryer means a dryer that uses elevated temperature to

remove moisture from particles and paddles to advance materials through the dryer. This type of dryer removes moisture absorbed by particles due to high ambient temperature. A *paddle-type particleboard dryer* is a process unit.

Panel-trim chipper means a piece of equipment that accepts the discarded pieces of veneer or pressed plywood and composite wood products panels that are removed by finishing saws and reduces these pieces to small elements. A *panel-trim chipper* is a process unit.

Particleboard extruder means a heated die oriented either horizontally or vertically through which resinated particles are continuously forced to form extruded particleboard products. A *particleboard extruder* is a process unit.

Particleboard press mold means a press that consists of molds that apply heat and pressure to form molded or shaped particleboard products. A *particleboard press mold* is a process unit.

Propane means a colorless gas derived from petroleum and natural gas, with the molecular structure C_3H_8.

Radio-frequency veneer redryer means a dryer heated by radio-frequency waves that is used to redry veneer that has been previously dried. A *radio-frequency veneer redryer* is a process unit.

Reference Concentration (RfC) means an estimate (with uncertainty spanning perhaps an order of magnitude) of a continuous inhalation exposure to the human population (including sensitive subgroups) that is likely to be without an appreciable risk of deleterious effects during a lifetime. It can be derived from various types of human or animal data, with uncertainty factors generally applied to reflect limitations of the data used.

Resin storage tank means any storage tank, container, or vessel connected to plywood and composite wood product production that contains resin additives. A *resin storage tank* is a process unit.

Rotary agricultural fiber dryer means a rotary dryer operated at elevated temperature and used to reduce the moisture of agricultural fiber. A *rotary agricultural fiber dryer* is a process unit.

Softwood plywood press means a hot press which, through heat and pressure, bonds assembled softwood veneer plies and resin into a softwood plywood panel. A *softwood plywood press* is a process unit.

Softwood veneer kiln means an enclosed dryer operated in batch cycles at elevated temperature to reduce the moisture content from stacked softwood veneer. A *softwood veneer kiln* is a process unit.

Stand-alone digester means a pressure vessel used to heat and soften wood chips (usually by steaming) before the chips are sent to a separate process unit for refining into fiber. A *stand-alone digester* is a process unit.

Target organ specific hazard index (TOSHI) means the sum of hazard quotients for individual chemicals that affect the same organ or organ system (*e.g.*, respiratory system, central nervous system).

Unit Risk Estimate (URE) means the upper-bound excess lifetime cancer risk estimated to result from continuous exposure to an agent at a concentration of 1 microgram per cubic meter ($\mu g/m^3$) in air.

Wastewater/process water operation means equipment that processes water in plywood or composite wood product facilities for reuse or disposal. Wastewater/process water operations includes but is not limited to pumps, holding ponds and tanks, cooling and heating operations, settling systems, filtration systems, aeration systems, clarifiers, pH adjustment systems, log storage ponds, pollution control device water (including wash water), vacuum distillation systems, sludge drying and disposal systems, spray irrigation fields, and connections to POTW facilities. *Wastewater/process water operations* are process units.

Worst-case operating conditions means operation of a process unit during emissions testing under the conditions that result in the highest HAP emissions or that result in the emissions stream composition (including HAP and non-HAP) that is most challenging for the control device if a control device is used. For example, worst case conditions could include operation of the process unit at maximum throughput, at its highest temperature, with the wood species mix likely to produce the most HAP, and/or with the resin formulation containing the greatest HAP.

19. Add Table 2A to read as follows:

TABLE 2A.—TO APPENDIX B TO SUBPART DDDD OF 40 CFR PART 63. TESTING AND EMISSIONS ESTIMATION SPECIFICATIONS FOR PROCESS UNITS.

Process unit type	Acetaldehyde	Acrolein	Formaldehyde	Phenol	Benzene	MDI	HAP metals from direct-fired process units [b]
Agricultural fiberboard mat dryers, Dry rotary dryers, Fiberboard mat dryer (heated zones), Green rotary dryers, Hardboard ovens, Hardwood veneer dryers (heated zones), Paddle-type particleboard dryers, Press predryers, Rotary agricultural fiber dryers, Rotary strand dryers, Softwood veneer dryers (heated zones), Veneer redryers (heated by conventional means).	test	test	test	test	test	NA	test.
Atmospheric refiners, Conveyor strand dryers, Pressurized refiners.	test	test	test	test	test	NA	NA.
Primary tube dryers, Secondary tube dryers.	test	test	test	test	test	test if processing furnish with MDI resin added prior to drying.	test.
Agricultural fiber board presses, Reconstituted wood products presses, Reconstituted wood product board coolers.	test	test	test	test	test	test if board contains MDI resin.	NA.

TABLE 2A.—TO APPENDIX B TO SUBPART DDDD OF 40 CFR PART 63. TESTING AND EMISSIONS ESTIMATION SPECIFICATIONS FOR PROCESS UNITS.—Continued

Process unit type	Acetaldehyde	Acrolein	Formaldehyde	Phenol	Benzene	MDI	HAP metals from direct-fired process units [b]
Blending and forming operations—particleboard and MDF.	NA	NA	0.060 lb/DOT	NA	NA	engineering estimate if MDI resin used.	NA.
Blending and forming operations—OSB.	NA	NA	0.0036 lb/MSF 3/8″ press throughput.	engineering estimate.	NA	engineering estimate if MDI resin used.	NA.
Dry forming—hardboard	engineering estimate.	NA	engineering estimate.	engineering estimate.	NA	NA	NA.
Fiber washers	0.015 lb/ODT	NA	0.0026 lb/ODT.	NA	NA	NA	NA.
Fiberboard mat dryer (fugitive emissions).	0.0055 lb/MSF 1/2″.	NA	0.031lb/MSF 1/2″.	NA	NA	NA	NA
Finishing sanders	0.0028 lb/MSF 3/8″.	NA	0.0042 lb/MSF.	0.015 lb/MSF	NA	engineering estimate if MDI resin used.	NA.
Finishing saws	0.00092 lb/MSF 3/8″.	NA	0.00034 lb/MSF 3/8″.	0.0057 lb/MSF.	NA	engineering estimate if MDI resin used.	NA.
Hardwood plywood presses	NA	NA	0.0088 lb/MSF 3/8″.	0.016 lb/MSF 3/8″.	NA	NA	NA.
Hardwood veneer dryer (cooling zones).	0.058 lb/MSF 3/8″.	NA	0.013 lb/MSF 3/8″.	NA	NA	NA	NA.
Hardwood veneer kilns	0.067 lb/MSF 3/8″.	NA	0.016 lb/MSF 3/8″.	0.0053 lb/MSF 3/8″.	NA	NA	NA.
Humidifiers	0.0018 lb/MSF 1/8″.	0.0087 lb/MSF 1/8″.	0.0010 lb/MSF 1/8″.	0.00057 lb/MSF 1/8″.	0.0000062 lb/MSF 1/8″.	NA	NA.
I-joist curing chambers	NA	NA	0.0018 lb/MSF.	NA	NA	engineering estimate if MDI resin used.	NA.
Log vats	0.0047 lb/MSF 3/8″ removed from vate per hour.	NA	NA	NA	NA	NA	NA.
LSL presses	engineering estimate.	NA	0.029 lb/1000 ft^3.	engineering estimate.	NA	0.18 lb/1000 ft^3.	NA.
LVL presses	0.29 lb/1000 ft^3.	NA	0.79 lb/1000 ft^3.	NA	NA	NA	NA.
Lumber kilns	0.065 lb/MBF	0.009 lb/MBF	0.034 lb/MBF	0.010 lb/MBF	NA	NA	Engineering estimate.
Panel-trim chippers	0.00081 lb/MSF 3/8″ finished board production.	NA	0.00034 lb/MSF 3/8″ finished board production.	0.0019 lb/MSF 3/8″ finished board production.	NA	NA	NA.
Particleboard press molds, Particleboard extruders.	0.034 lb/MSF 3/4″.	0.0087 lb/MSF 3/4″.	0.64 lb/MSF 3/4″.	0.024 lb/MSF 3/4″.	0.0073 lb/MSF 3/4″.	NA	NA.
Radio-frequency veneer redryers.	0.0029 lb/MSF 3/8″.	NA	0.00065 lb/MSF 3/8″.	NA	NA	NA	NA.
Resin storage tanks	NA	NA	0.19 lb/hr per tank for tanks with resin containing formaldehyde OR model using TANKS software [a].	0.18 lb/hr per tank for tanks with resin containing phenol OR model using TANKS software [a].	NA	0.0013 lb/hr per tank for tanks with MDI resin OR model using TANKS software [a].	NA.

TABLE 2A.—TO APPENDIX B TO SUBPART DDDD OF 40 CFR PART 63. TESTING AND EMISSIONS ESTIMATION SPECIFICATIONS FOR PROCESS UNITS.—Continued

Process unit type	Acetaldehyde	Acrolein	Formaldehyde	Phenol	Benzene	MDI	HAP metals from direct-fired process units [b]
Softwood plywood presses	0.012 lb/MSF ⅜″.	NA	0.0054 lb/MSF ⅜″.	0.0022 lb/MSF ⅜″.	NA	NA	NA.
Softwood veneer dryers (cooling zones).	0.012 lb/MSF ⅜″.	NA	0.0028 lb/MSF ⅜″.	0.011 lb/MSF ⅜″.	NA	NA	NA.
Softwood veneer kilns	0.097 lb/MSF ⅜″.	0.012 lb/MSF ⅜″.	0.010 lb/MSF ⅜″.	0.020 lb/MSF ⅜″.	0.0078 lb/MSF ⅜″.	NA	NA.
Stand-alone digesters	0.030 lb/ODT	0.0024 lb/ODT.	0.0045 lb/ODT.	0.0012 lb/ODT.	NA	NA	NA.
Wastewater/process water operations.	engineering estimate (such as WATER9 [a] or other method).	engineering estimate (such as WATER9 [a] or other method).	engineering estimate (such as WATER9 [a] or other method).	engineering estimate (such as WATER9 [a] or other method).	engineering estimate (such as WATER9 [a] or other method).	engineering estimate (such as WATER9 [a] or other method) if MDI resin used.	NA.
Wet forming—fiberboard and hardboard (without PF resin).	0.0075 lb/MSF ½″.	NA	0.0036 lb/MSF ½″.	NA	NA	NA	NA.
Wet forming—hardboard (PF resin).	0.0067 lb/ODT.	NA	0.00039 lb/ODT.	0.00075 lb/ODT.	NA	NA	NA.
Miscellaneous coating operations, Log chipping, Softwood veneer dryer fugitive emissions.	NA	NA	NA	NA	NA	NA	NA.
Other ancillary processes (not listed elsewhere in this table) that may emit HAP listed in this table.	engineering estimate.	engineering estimate.	engineering estimate.	engineering estimate.	engineering estimate.	engineering estimate.	engineering estimate

test: Emissions testing must be conducted for the process unit and pollutant according to the test methods specified in Table 2B to appendix B to supbart DDDD.

NA: Not applicable. No emission estimates or emissions testing is required for purposes of the low-risk demonstration.

lb/50 MSF: Pounds of HAP per thousand square feet of board of the inches thickness specified (e.g., lb/MSF ¾ = pounds of HAP per thousand square feet of ¾-inch board). See equation in § 63.2262(j) of subpart DDDD to convert from one thickness basis to another.

lb/ODT: 50 Pounds of HAP per oven dried ton of wood material.

lb/MBF: Pounds of HAP per thousand board feet.

lb/MLF: Pounds of HAP per thousand linear feet.

[a] TANKS and WATER9 software is available at *http://www.epa.gov/ttn/chief.software/index.html.*

[b] Excludes direct-fired process units fired with only natural gas or propane.

20. Redesignate Table 2 as Table 2B and revise to read as follows:

TABLE 2B TO APPENDIX B TO SUBPART DDDD OF 40 CFR PART 63.—EMISSION TEST METHODS

For . . .	You must . . .	Using . . .
1. Each process unit required to be tested according to table 2A to this appendix.	Select sampling ports' location and the number of traverse points.	Method 1 or 1A of 40 CFR part 60, appendix A (as appropriate).
2. Each process unit required to be tested according to table 2A to this appendix.	Determine velocity and volumetric flow rate	Method 2 in addition to Method 2A, 2C, 2D, 2F, or 2G in appendix A to 40 CFR part 60 (as appropriate).
3. Each process unit required to be tested according to table 2A to this appendix.	Conduct gas molecular weight analysis	Method 3, 3A, or 3B in appendix A to 40 CFR part 60 (as appropriate).
4. Each process unit required to be tested according to table 2A to this appendix.	Measure moisture content of the stack gas	Method 4 in appendix A to 40 CFR part 60.
5. Each process unit required to be tested according to table 2A to this appendix.	Measure emissions of the following HAP: Acetaldehyde, acrolein, formaldehyde, and phenol.	NCASI Method IM/CAN/WP–99.02 (IBR, see 40 CFR 63.14(f)); OR Method 320 in appendix A to 40 CFR part 63; OR the NCASI Method ISS/WP–A105.01 (IBR, see § 63.14(f)); OR ASTM D6348–03 (IBR, see 40 CFR 63.14(b)) provided that percent R as determined in Annex A5 of ASTM D6348–03 is equal or greater than 70 percent and less than or equal to 130 percent.

TABLE 2B TO APPENDIX B TO SUBPART DDDD OF 40 CFR PART 63.—EMISSION TEST METHODS—Continued

For . . .	You must . . .	Using . . .
6. Each process unit required to be tested according to table 2A to this appendix.	Measure emissions of benzene	Method 18 in appendix A to 40 CFR part 60; NCASI Method IM/CAN/WP–99.02 (IBR, see 40 CFR 63.14(f)); OR Method 320 in appendix A to 40 CFR part 63; OR ASTM D6348–03 (IBR, see 40 CFR 63.14(b)) provided that percent R as determined in Annex A5 of ASTM D6348–03 is equal or greater than 70 percent and less than or equal to 130 percent.
7. Each process unit that processes material containing MDI resin required to be tested according to table 2A to this appendix.	Measure emissions of MDI	Method 320 in appendix A to 40 CFR part 63; OR Conditional Test Method (CTM) 031 which is posted on *http://www.epa.gov/ttn/emc/ctm.html*.
8. Each direct-fired process unit [a] required to be tested according to table 2A to this appendix.	Measure emissions of the following HAP metals: Arsenic, beryllium, cadmium, chromium, lead, manganese, and nickel.	Method 29 in appendix A to 40 CFR part 60.
9. Each reconstituted wood product press or reconstituted wood product board cooler with a HAP control device.	Meet the design specifications included in the definition of wood products enclosure in § 63.2292 of subpart DDDD of 40 CFR part 63 or determine the percent capture efficiency of the enclosure directing emissions to an add-on control device.	Methods 204 and 204A through 204F of 40 CFR part 51, appendix M to determine capture efficiency (except for wood products enclosures as defined in § 63.2292). Enclosures that meet the definition of wood products enclosure or that meet Method 204 requirements for a PTE are assumed to have a capture efficiency of 100 percent. Enclosures that do not meet either the PTE requirements or design criteria for a wood products enclosure must determine the capture efficiency by constructing a TTE according to the requirements of Method 204 and applying Methods 204A through 204F (as appropriate). As an alternative to Methods 204 and 204A through 204F, you may use the tracer gas method contained in appendix A to subpart DDDD.
10. Each reconstituted wood product press or reconstituted wood product board cooler required to be tested according to table 2A to this appendix.	Determine the percent capture efficiency	A TTE and Methods 204 and 204A through 204F (as appropriate) of 40 CFR part 51, appendix M. As an alternative to installing a TTE and using Methods 204 and 204A through 204F, you may use the tracer gas method contained in appendix A to subpart DDDD. Measured emissions divided by the capture efficiency provides the emission rate.
11. Each process unit with a HAP control device required to be tested according to table 2A to this appendix.	Establish the site-specific operating requirements (including the parameter limits or THC concentration limits) in table 2 to subpart DDDD.	Data from the parameter monitoring system or THC CEMS and the applicable performance test method(s).

[a] Excludes direct-fired process units fired with only natural gas or propane.

21. Revise Table 3 to read as follows:

TABLE 3 TO APPENDIX B TO SUBPART DDDD OF 40 CFR PART 63.—MAXIMUM ALLOWABLE TOXICITY-WEIGHTED CARCINOGEN EMISSION RATE (LB/HR)/(μG/M^3)

Stack height (m)	Distance to property boundary (m)											
	0	50	100	150	200	250	500	1000	1500	2000	3000	5000
5	8.72E–07	8.72E–07	8.72E–07	9.63E–07	1.25E–06	1.51E–06	2.66E–06	4.25E–06	4.39E–06	4.39E–06	4.39E–06	5.00E–06
10	2.47E–06	2.47E–06	2.47E–06	2.47E–06	2.47E–06	2.61E–06	3.58E–06	5.03E–06	5.89E–06	5.89E–06	5.89E–06	6.16E–06
20	5.81E–06	5.81E–06	5.81E–06	5.81E–06	5.81E–06	5.81E–06	5.90E–06	7.39E–06	8.90E–06	9.97E–06	9.97E–06	1.12E–05
30	7.74E–06	7.74E–06	7.74E–06	7.74E–06	7.74E–06	7.74E–06	8.28E–06	9.49E–06	1.17E–05	1.35E–05	1.55E–05	1.61E–05
40	9.20E–06	9.20E–06	9.20E–06	9.20E–06	9.20E–06	9.20E–06	9.24E–06	1.17E–05	1.34E–05	1.51E–05	1.98E–05	2.22E–05
50	1.02E–05	1.02E–05	1.02E–05	1.02E–05	1.02E–05	1.02E–05	1.02E–05	1.36E–05	1.53E–05	1.66E–05	2.37E–05	2.95E–05
60	1.13E–05	1.13E–05	1.13E–05	1.13E–05	1.13E–05	1.13E–05	1.13E–05	1.53E–05	1.76E–05	1.85E–05	2.51E–05	3.45E–05
70	1.23E–05	1.23E–05	1.23E–05	1.23E–05	1.23E–05	1.23E–05	1.23E–05	1.72E–05	2.04E–05	2.06E–05	2.66E–05	4.07E–05
80	1.34E–05	1.34E–05	1.34E–05	1.34E–05	1.34E–05	1.34E–05	1.34E–05	1.92E–05	2.15E–05	2.31E–05	2.82E–05	4.34E–05
100	1.52E–05	1.52E–05	1.52E–05	1.52E–05	1.52E–05	1.52E–05	1.52E–05	1.97E–05	2.40E–05	2.79E–05	3.17E–05	4.49E–05
200	1.76E–05	1.76E–05	1.76E–05	1.76E–05	1.76E–05	1.76E–05	1.76E–05	2.06E–05	2.94E–05	3.24E–05	4.03E–05	5.04E–05

MIR=1E–06.

22. Revise Table 4 to read as follows:

TABLE 4 TO APPENDIX B TO SUBPART DDDD OF 40 CFR PART 63.—MAXIMUM ALLOWABLE TOXICITY-WEIGHTED NONCARCINOGEN EMISSION RATE (LB/HR)/(μG/M^3)

Stack height (m)	Distance to property boundary (m)											
	0	50	100	150	200	250	500	1000	1500	2000	3000	5000
5	2.51E–01	2.51E–01	3.16E–01	3.16E–01	3.16E–01	3.16E–01	3.16E–01	3.46E–01	4.66E–01	6.21E–01	9.82E–01	1.80E+00
10	5.62E–01	5.62E–01	5.62E–01	5.62E–01	5.62E–01	5.62E–01	5.62E–01	5.70E–01	6.33E–01	7.71E–01	1.13E+00	1.97E+00
20	1.43E+00	1.43E+00	1.43E+00	1.43E+00	1.43E+00	1.43E+00	1.43E+00	1.43E+00	1.68E+00	1.83E+00	2.26E+00	3.51E+00
30	2.36E+00	2.36E+00	2.36E+00	2.36E+00	2.36E+00	2.36E+00	2.53E+00	3.04E+00	3.04E+00	3.33E+00	4.45E+00	5.81E+00
40	3.11E+00	3.11E+00	3.11E+00	3.11E+00	3.11E+00	3.11E+00	3.42E+00	4.04E+00	5.07E+00	5.51E+00	6.39E+00	9.63E+00
50	3.93E+00	3.93E+00	3.93E+00	3.93E+00	3.93E+00	3.93E+00	4.49E+00	4.92E+00	6.95E+00	7.35E+00	8.99E+00	1.25E+01
60	4.83E+00	4.83E+00	4.83E+00	4.83E+00	4.83E+00	4.83E+00	5.56E+00	6.13E+00	7.80E+00	1.01E+01	1.10E+01	1.63E+01
70	5.77E+00	5.77E+00	5.77E+00	5.77E+00	5.77E+00	5.77E+00	6.45E+00	7.71E+00	8.83E+00	1.18E+01	1.36E+01	1.86E+01
80	6.74E+00	6.74E+00	6.74E+00	6.74E+00	6.74E+00	6.74E+00	7.12E+00	9.50E+00	1.01E+01	1.29E+01	1.72E+01	2.13E+01
100	8.87E+00	8.87E+00	8.87E+00	8.87E+00	8.87E+00	8.87E+00	8.88E+00	1.19E+01	1.37E+01	1.55E+01	2.38E+01	2.89E+01
200	1.70E+01	1.70E+01	1.70E+01	1.70E+01	1.70E+01	1.70E+01	1.70E+01	2.05E+01	2.93E+01	3.06E+01	4.02E+01	4.93E+01

HI=1.

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Federal Register

Friday,
July 29, 2005

Part V

The President

Proclamation 7915—Anniversary of the Americans with Disabilities Act, 2005

Federal Register
Vol. 70, No. 145
Friday, July 29, 2005

Presidential Documents

Title 3—

The President

Proclamation 7915 of July 26, 2005

Anniversary of the Americans with Disabilities Act, 2005

By the President of the United States of America

A Proclamation

On July 26, 1990, President George H. W. Bush signed into law the Americans with Disabilities Act (ADA). This historic legislation provides a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities. The ADA reflects our Nation's faith in the promise of all individuals and helps to ensure that our Nation's opportunities are more accessible to all.

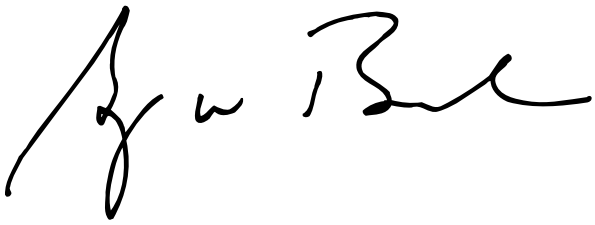
The ADA has been a great success in expanding opportunity for disabled Americans. By reducing barriers and changing perceptions, the ADA has increased participation in community life and given greater hope to millions of Americans.

Because of the ADA, individuals with disabilities are better able to develop skills for school, work, and independent living. Our Nation has more to do to further the goals of the ADA. Through the New Freedom Initiative, my Administration is building on the progress of the ADA to increase the use of technology and expand educational and employment opportunities. We are promoting the development and dissemination of assistive and universally designed technology. We have launched DisabilityInfo.gov, an online resource of programs and technology relevant to the daily lives of people with disabilities and their families, employers, service providers, and other community members. We also require electronic and information technologies used by the Federal Government to be accessible to people with disabilities. To ensure that no child with a disability is left behind, I have requested $11.1 billion for the Individuals with Disabilities Education Act in my FY 2006 budget—$4.7 billion above the FY 2001 level. The Department of Education is seeking new and effective ways for students with disabilities to learn. My Administration is also working to educate employers on ADA requirements and further assisting persons with disabilities by implementing the "Ticket to Work'' program and strengthening training and employment services at One-Stop Career Centers. Through all of these efforts, we are helping individuals with disabilities have the opportunity to live and work with greater freedom.

On the 15th anniversary of the Americans with Disabilities Act, we celebrate the progress that has been made and reaffirm our commitment to fulfilling the ADA's mission of bringing greater hope and opportunity to our Nation's disabled Americans.

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 July 26, 2005, as a day in celebration of the 15th Anniversary of the Americans with Disabilities Act. I call on all Americans to celebrate the many contributions individuals with disabilities have made to our country, and I urge our citizens to fulfill the promise of the ADA to give all people the opportunity to live with dignity, work productively, and achieve their dreams.

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



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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*.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html*. Some laws may not yet be available.

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