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

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 77

[Docket No. 05–035–1]

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

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the bovine tuberculosis regulations to designate the Upper Peninsula of the State of Michigan as an accredited-free zone. We have determined that Michigan meets the requirements for zone recognition and that the Upper Peninsula meets the criteria for designation as an accredited-free zone. This action relieves restrictions on the interstate movement of cattle and bison from the Upper Peninsula.

DATES: This interim rule is effective September 30, 2005. We will consider all comments that we receive on or before December 5, 2005.

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

- EDOCKET: Go to *http://www.epa.gov/feddocket* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once you have entered EDOCKET, click on the ''View Open APHIS Dockets'' link to locate this document.
- Postal Mail/Commercial Delivery: Please send four copies of your comment (an original and three copies) to Docket No. 05–035–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 05–035–1.
- Federal eRulemaking Portal: Go to *http://www.regulations.gov* and follow the instructions for locating this docket and submitting comments.

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

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

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

SUPPLEMENTARY INFORMATION:

Background

Bovine tuberculosis is a contagious and infectious granulomatous disease caused by *Mycobacterium bovis.* It affects cattle, bison, deer, elk, goats, and other warm-blooded species, including humans. Bovine tuberculosis in infected animals and humans manifests itself in lesions of the lung, bone, and other body parts, causes weight loss and general debilitation, and can be fatal. At the beginning of the last century, bovine tuberculosis caused more losses of livestock than all other livestock diseases combined. This prompted the establishment of the National Cooperative State/Federal Bovine Tuberculosis Eradication Program for bovine tuberculosis in livestock. Through this program, the Animal and Plant Health Inspection Service (APHIS) works cooperatively with the national livestock industry and State animal health agencies to eradicate tuberculosis from domestic livestock in the United States and prevent its recurrence.

Federal regulations implementing this program are contained in 9 CFR part 77 ''Tuberculosis'' (referred to below as the regulations), and in the ''Uniform Methods and Rules—Bovine Tuberculosis Eradication'' (UMR), which is incorporated by reference into the regulations. The regulations restrict the interstate movement of cattle, bison, and captive cervids to prevent the spread of tuberculosis. Subpart B of the regulations contains requirements for the interstate movement of cattle and bison not known to be infected with or exposed to tuberculosis. The interstate movement requirements depend upon whether the animals are moved from an accredited-free State or zone, modified accredited advanced State or zone, modified accredited State or zone, accreditation preparatory State or zone, or nonaccredited State or zone.

Conditions for Zone Recognition

Under §§ 77.3 and 77.4 of the regulations, in order to qualify for zone classification by APHIS, the State must meet the following requirements:

1. The State must have adopted and must be enforcing regulations that impose restrictions on the intrastate movement of cattle, bison, and captive cervids that are substantially the same as those in place in part 77 for the interstate movement of those animals.
2. The designation of part of a State as a zone must otherwise be adequate to prevent the interstate spread of tuberculosis.
3. The zones must be delineated by the animal health authorities in the State making the request for zone recognition and must be approved by the APHIS Administrator.
4. The request for zone classification must demonstrate that the State has the legal and financial resources to implement and enforce a tuberculosis eradication program and has in place an infrastructure, laws, and regulations that require and ensure that State and Federal animal health authorities are notified of tuberculosis cases in domestic livestock or outbreaks in wildlife.
5. The request for zone classification must demonstrate that the State maintains, in each intended zone, clinical and epidemiological surveillance of animal species at risk of tuberculosis, at a rate that allows detection of tuberculosis in the overall population of livestock at a 2 percent prevalence rate with 95 percent confidence. The designated tuberculosis epidemiologist must review reports of

all testing for each zone within the State within 30 days of the testing.

6. The State must enter into a memorandum of understanding with APHIS in which the State agrees to adhere to any conditions for zone recognition particular to that request.

Request for Third Zone in Michigan

The State of Michigan is currently divided into two zones with different classifications. The first zone, which is classified as modified accredited, comprises Alcona, Alpena, Antrim, Charlevoix, Cheboygan, Crawford, Emmet, Montmorency, Oscoda, Otsego, and Presque Isle Counties and those portions of Iosco and Ogemaw Counties that are north of the southernmost boundary of the Huron National Forest and the Au Sable State Forest. The second zone covers the remainder of the State and is classified as modified accredited advanced.

We have received from the State of Michigan a request for recognition of a portion of the modified accredited advanced zone as a third zone. Specifically, the State animal health officials requested that Michigan's Upper Peninsula, which consists of Alger, Baraga, Chippewa, Delta, Dickinson, Gogebic, Houghton, Iron, Keweenaw, Luce, Mackinac, Marquette, Menominee, Ontonagon, and Schoolcraft Counties, be recognized as a separate zone. In their request, Michigan officials demonstrated that Michigan meets the requirements listed above for the requested zone designation. Therefore, in this interim rule, we are recognizing Michigan's Upper Peninsula as a separate zone.

With regard to cattle and bison, State animal health officials in Michigan have demonstrated to APHIS that the Upper Peninsula meets the criteria for accredited-free status set forth in the definition of *accredited-free State or zone* in § 77.5 of the regulations. In accordance with these conditions, Michigan has demonstrated that the Upper Peninsula has zero percent prevalence of affected cattle or bison herds and has had no findings of tuberculosis in any cattle or bison herds for the last 5 years. Additionally, the State complies with the conditions of the UMR.

Providing recognition of Michigan's Upper Peninsula as an accredited-free zone will allow cattle producers in that zone to move their cattle without a tuberculosis test, thus saving time and money. This action will therefore relieve restrictions that are no longer warranted, and facilitate further efforts of the National Tuberculosis Eradication Program.

Immediate Action

Immediate action is warranted to relieve restrictions on the interstate movement of cattle and bison from those counties which make up Michigan's Upper Peninsula. We have determined that Michigan's Upper Peninsula has satisfied the requirements for designation as an accredited-free zone in Michigan. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this action effective less than 30 days after publication in the **Federal Register**.

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

Executive Order 12866 and Regulatory Flexibility Act

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

The State of Michigan has been split into two zones for bovine tuberculosis, with one classified as modified accredited and the other zone classified as modified accredited advanced. We are amending the regulations to establish Michigan's Upper Peninsula as a third zone for bovine tuberculosis, with the status level of accredited-free.

According to the size standard established by the Small Business Administration for producers of cattle and calves (NAICS 112111, Beef cattle ranching and farming), enterprises with not more than $750,000 in annual receipts qualify as small entities. Based on data from the 2002 Census of Agriculture, 814 operations in the Upper Peninsula raised 54,315 cattle and calves in 2002. In Michigan as a whole, over 99 percent of entities engaged in cattle farming are small entities. In 2002, they owned an average of 57 cattle and had an average income of $19,620, well below the $750,000 criterion. Large operations had an average of 2,112 cattle and an average annual income of $1,692,590. The proportion of small to large cattle producers in the Upper Peninsula is presumably similar to their proportion State-wide. The overwhelming majority of operations affected by the rule are expected to be small.

Tuberculosis testing, which includes veterinary fees and handling expenses, costs about $10 to $15 per test. There were 54,315 cattle and calves in the Upper Peninsula in 2002. Of this total, about 50 percent were breeding animals and the rest were animals in feedlots and outside feedlots. About 10 percent of those non-breeding cattle and calves are moved interstate. With accredited-free status, producers in the Upper Peninsula would no longer be required to test those animals prior to interstate movement, so savings of between $27,158 and $40,736 in forgone testing costs could be expected. If those savings were distributed evenly across the 814 operations identified in the 2002 Census of Agriculture, each operation could be expected to see savings of between approximately $33 and $50.

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

Executive Order 12372

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

Executive Order 12988

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

Paperwork Reduction Act

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

List of Subjects in 9 CFR Part 77

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

■ Accordingly, we are amending 9 CFR part 77 as follows:

PART 77—TUBERCULOSIS

■ 1. The authority citation for part 77 continues to read as follows:

Authority: 7 U.S.C. 8301–8317; 7 CFR 2.22, 2.80, and 371.4.

■ 2. In § 77.7, paragraph (b) is revised to read as follows:

§ 77.7 Accredited-free States or zones.

* * * * *

(b) The following are accredited-free zones:

(1) A zone in Michigan known as the Upper Peninsula that comprises Alger, Baraga, Chippewa, Delta, Dickinson, Gogebic, Houghton, Iron, Keweenaw, Luce, Mackinac, Marquette, Menominee, Ontonagon, and Schoolcraft Counties.

(2) All of the State of New Mexico except for the zone that comprises those portions of Curry and Roosevelt Counties, NM, described in § 77.9(b)(2).

* * * * *

■ 3. In § 77.9, paragraph (b)(1) is revised to read as follows.

§ 77.9 Modified accredited advanced States or zones.

* * * * *

(b) * * *

(1) The following are modified accredited advanced zones: All of the State of Michigan except for the zones that comprise those counties or portions of counties in Michigan described in § 77.7(b)(1) and § 77.11(b).

* * * * *

Done in Washington, DC, this 30th day of September 2005.

W. Ron DeHaven,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 05–20098 Filed 10–5–05; 8:45 am]

BILLING CODE 3410–34–P

FARM CREDIT ADMINISTRATION

12 CFR Parts 620, 621, 650, 651, 652, 653, 654, and 655

RIN 3052–AC18

Disclosure to Shareholders; Accounting and Reporting Requirements; Federal Agricultural Mortgage Corporation General Provisions; Federal Agricultural Mortgage Corporation Governance; Federal Agricultural Mortgage Corporation Funding and Fiscal Affairs; Federal Agricultural Mortgage Corporation Disclosure and Reporting Requirements; Effective Date

AGENCY: Farm Credit Administration.

ACTION: Notice of effective date.

SUMMARY: The Farm Credit Administration (FCA) published a final rule under parts 620, 621, 650, 651, 652, 653, 654, and 655 on July 14, 2005 (70 FR 40635). This final rule ensures that the Federal Agricultural Mortgage Corporation (Farmer Mac) continues to hold high-quality, liquid investments to maintain a sufficient liquidity reserve, invest surplus funds, and manage interest-rate risk, while maintaining non-program investments at appropriate levels considering Farmer Mac's status as a Government-sponsored enterprise. In accordance with 12 U.S.C. 2252, the effective date of the final rule is 30 days from the date of publication in the **Federal Register** during which either or both Houses of Congress are in session. Based on the records of the sessions of Congress, the effective date of the regulation is September 30, 2005.

EFFECTIVE DATE: The regulation amending 12 CFR parts 620, 621, 650, 651, 652, 653, 654, and 655 published on July 14, 2005 (70 FR 40635) is effective September 30, 2005.

FOR FURTHER INFORMATION CONTACT: Joseph T. Connor, Associate Director for Policy and Analysis Office of Secondary Market Oversight, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4364, TTY (703) 883–4434; or Jennifer A. Cohn, Senior Attorney, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TTY (703) 883–4020.

(12 U.S.C. 2252(a)(9) and (10))

Dated: September 30, 2005.

Jeanette C. Brinkley,

Secretary, Farm Credit Administration Board.

[FR Doc. 05–20036 Filed 10–5–05; 8:45 am]

BILLING CODE 6705–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–22583; Directorate Identifier 2002–NM–303–AD; Amendment 39–14318; AD 2005–20–22]

RIN 2120–AA64

Airworthiness Directives; BAE Systems (Operations) Limited Model ATP Airplanes

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

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all BAE Systems (Operations) Limited Model ATP airplanes. This AD requires repetitive inspections for environmental damage, including corrosion, of the fuselage and wing structure, and corrective actions if necessary. This AD results from information indicating the potential for environmental damage of the fuselage and wing structure. We are issuing this AD to detect and correct such damage, including corrosion, in the fuselage and wing structure, which could result in cracking and consequent reduced structural integrity of the fuselage and wing structure.

DATES: This AD becomes effective October 21, 2005.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of October 21, 2005.

We must receive comments on this AD by December 5, 2005.

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

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

Contact British Aerospace Regional Aircraft American Support, 13850 Mclearen Road, Herndon, Virginia 20171, for service information identified in this AD.

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

SUPPLEMENTARY INFORMATION:

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, notified us that an unsafe condition may exist on all BAE Systems (Operations) Limited Model ATP airplanes. The CAA advises that there is a potential for environmental damage of the fuselage and wing structure. New inspections for environmental damage were added to the ATP Maintenance Review Board

(MRB) Report and the Maintenance Planning Document (MPD). However, no compliance statements were included in these documents to advise operators when the first inspections must be performed. Environmental damage such as corrosion, if not corrected, could result in cracking and consequent reduced structural integrity of the fuselage and wing structure.

Relevant Service Information

BAE Systems (Operations) Limited has issued Service Bulletin ATP–51–001, dated August 14, 2002. The service bulletin describes procedures for repetitive detailed visual inspections for environmental damage, including but not limited to corrosion, of the fuselage and wing structure, and corrective actions if necessary. If damage is found, the service bulletin specifies to refer to the structural repair manual (SRM) for corrective action (repair). If the damage is outside the limits specified in the SRM, the service bulletin specifies to contact the manufacturer for repair instructions. The service bulletin also specifies reporting the inspection results to the manufacturer. The service bulletin specifies that the repetitive interval for the inspections in the service bulletin is stated in the MRB Report and the MPD. This repetitive interval is 8 years.

Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition. The CAA mandated BAE Systems (Operations) Limited Service Bulletin ATP–51–001 to ensure the continued airworthiness of these airplanes in the United Kingdom.

FAA's Determination and Requirements of This AD

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

Therefore, we are issuing this AD to detect and correct environmental damage, including corrosion, of the fuselage and wing structure, which could result in cracking and consequent reduced structural integrity of the fuselage and wing structure. This AD requires accomplishing the actions specified in BAE Systems (Operations) Limited Service Bulletin ATP–51–001, described previously, except as discussed under ''Differences Between the AD and Service Information.''

Clarification of Inspection Terminology

In this AD, the ''detailed visual inspections'' specified in BAE Systems (Operations) Limited Service Bulletin ATP–51–001 are referred to as ''detailed inspections.'' We have included the definition for a detailed inspection in a note in the AD.

Differences Between the AD and Service Information

If damage is found that is outside the limits specified in the SRM, BAE Systems (Operations) Limited Service Bulletin ATP–51–001 specifies reporting the details of the damage to In-Service Engineering and asking for repair instructions. This AD requires repairing any damage that is outside the limits specified in the SRM in accordance with a method that we or the CAA (or its delegated agent) approve. In light of the type of repair that would be required to address the unsafe condition, and consistent with existing bilateral airworthiness agreements, we have determined that, for this AD, a repair we or the CAA approve would be acceptable for compliance with this AD.

BAE Systems (Operations) Limited Service Bulletin ATP–51–001 specifies reporting the inspection results to the manufacturer. This AD does not require that action.

Costs of Compliance

None of the airplanes affected by this action are on the U.S. Register. All airplanes affected by this AD are currently operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, we consider this AD necessary to ensure that the unsafe condition is addressed if any affected airplane is imported and placed on the U.S. Register in the future.

If an affected airplane is imported and placed on the U.S. Register in the future, the required actions would take about 44 work hours per airplane, at an average labor rate of $65 per work hour. Based on these figures, the estimated cost of the AD would be $2,860 per airplane, per inspection cycle.

FAA's Determination of the Effective Date

No airplane affected by this AD is currently on the U.S. Register. Therefore, providing notice and opportunity for public comment is unnecessary before this AD is issued, and this AD may be made effective in less than 30 days after it is published in the **Federal Register**.

Comments Invited

This AD is a final rule that involves requirements that affect flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to submit any relevant written data, views, or arguments regarding this AD. Send your comments to an address listed in the **ADDRESSES** section. Include ''Docket No. FAA–2005–22583; Directorate Identifier 2002–NM–303–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the AD that might suggest a need to modify it.

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

Examining the Docket

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

Authority for This Rulemaking

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

We are issuing this rulemaking under the authority described in subtitle VII, part A, subpart III, section 44701,

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

Regulatory Findings

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

For the reasons discussed above, I certify that the regulation:

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

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2005–20–22 BAE Systems (Operations) Limited (Formerly British Aerospace Regional Aircraft): Amendment 39–14318. Docket No. FAA–2005–22583; Directorate Identifier 2002–NM–303–AD.

Effective Date

(a) This AD becomes effective October 21, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all BAE Systems (Operations) Limited Model ATP airplanes, certificated in any category.

Unsafe Condition

(d) This AD results from information indicating the potential for environmental damage of the fuselage and wing structure. We are issuing this AD to detect and correct such damage, including corrosion, in the fuselage and wing structure, which could result in cracking and consequent reduced structural integrity of the fuselage and wing structure.

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.

Repetitive Inspections and Corrective Actions

(f) Within 18 months after the effective date of this AD, perform detailed inspections for environmental damage, including but not limited to corrosion, of the fuselage and wing structure and any applicable corrective action in accordance with the Accomplishment Instructions of BAE Systems (Operations) Limited Service Bulletin ATP–51–001, dated August 14, 2002, except as provided by paragraph (g) of this AD. Any applicable corrective actions must be accomplished before further flight. Thereafter, repeat these inspections at intervals not to exceed those specified in the ATP Maintenance Review Board Report and the Maintenance Planning Document, as applicable, in accordance with the service bulletin.

Note 1: For the purposes of this AD, a detailed inspection is: ''An intensive examination of a specific item, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at an intensity deemed appropriate. Inspection aids such as mirror, magnifying lenses, etc., may be necessary. Surface cleaning and elaborate procedures may be required.''

Exception to Service Bulletin Instructions

(g) If damage is found that is outside the limits specified in the structural repair manual, as referenced in BAE Systems (Operations) Limited Service Bulletin ATP–51–001, dated August 14, 2002, and the service bulletin specifies reporting the details of the damage to In-Service Engineering and asking for repair instructions: Before further flight, repair the damage in accordance with a method approved by either the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the Civil Aviation Authority (or its delegated agent).

No Reporting

(h) Although British Aerospace ATP Service Bulletin ATP–51–001, dated August 14, 2002, specifies reporting inspection results to the manufacturer, this AD does not require that action.

Alternative Methods of Compliance (AMOCs)

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

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

Related Information

(j) None.

Material Incorporated by Reference

(k) You must use BAE Systems (Operations) Limited Service Bulletin ATP–51–001, dated August 14, 2002, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact British Aerospace Regional Aircraft American Support, 13850 Mclearen Road, Herndon, Virginia 20171, for a copy of this service information. You may review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, Nassif Building, Washington, DC; on the Internet at *http://dms.dot.gov;* or at the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Renton, Washington, on September 26, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–19833 Filed 10–5–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–22586; Directorate Identifier 2002–NM–258–AD; Amendment 39–14315; AD 2005–20–19]

RIN 2120–AA64

Airworthiness Directives; BAE Systems (Operations) Limited Model ATP Airplanes

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

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all BAE Systems (Operations) Limited Model ATP airplanes. This AD requires one-time inspections for corrosion of the engine sub-frame tubes in zone 1 and of the engine attachment struts in zone 5, and corrective action if necessary. This AD results from reports of reduced thickness in localized areas of the engine sub-frame tubes due to corrosion, and reports that corrosion may also exist in the engine attachment struts in zone 5. We are issuing this AD to prevent failure of the engine sub-frame tubes or the engine attachment struts, which could result in separation of an engine from the airplane.

DATES: This AD becomes effective October 21, 2005.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of October 21, 2005.

We must receive comments on this AD by December 5, 2005.

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

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

Contact British Aerospace Regional Aircraft American Support, 13850 Mclearen Road, Herndon, Virginia 20171, for service information identified in this AD.

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

SUPPLEMENTARY INFORMATION:

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, notified us that an unsafe condition may exist on all BAE Systems (Operations) Limited Model ATP airplanes. The CAA advises that there have been reports indicating reduced thickness in localized areas of the engine sub-frame tubes due to corrosion. Such corrosion may also exist in the engine attachment struts in zone 5. This condition, if not corrected, could result in failure of the engine sub-frame tubes or the engine attachment struts, and consequent separation of an engine from the airplane.

Relevant Service Information

BAE Systems (Operations) Limited has issued Service Bulletins ATP–54–18 and ATP–54–19, both dated March 2, 2001. Service Bulletin ATP–54–18 describes procedures for performing an X-ray (radiographic) inspection for corrosion of the engine sub-frame tubes in Zone 1, and doing corrective action if necessary. Service Bulletin ATP–54–19 describes procedures for performing an X-ray (radiographic) inspection for corrosion of the engine attachment struts in Zone 5, and doing corrective action if necessary. If corrosion is found, the service bulletins specify that the corrective action is installing a serviceable component, or contacting the manufacturer for instructions on repairing corroded components.

Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition. The CAA mandated the service information and issued British airworthiness directives 006–03–2001 (mandating Service Bulletin ATP–54–18) and 007–03–2001 (mandating Service Bulletin ATP–54–19) to ensure the continued airworthiness of these airplanes in the United Kingdom.

FAA's Determination and Requirements of This AD

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

Therefore, we are issuing this AD to prevent failure of the engine sub-frame tubes or the engine attachment struts, which could result in separation of an engine from the airplane. This AD requires accomplishing the actions specified in the service information described previously, except as discussed under ''Differences Among the AD, British Airworthiness Directives, and Service Bulletins.''

Differences Among the AD, British Airworthiness Directives, and Service Bulletins

British airworthiness directives 006–03–2001 and 007–03–2001 specify that compliance is required no later than August 31, 2002. We do not use calendar dates to establish compliance times in our ADs. In developing an appropriate compliance time for this AD, we considered the CAA's and the manufacturer's recommendations, and the degree of urgency associated with the subject unsafe condition. In light of these factors, we find that a compliance time of 180 days after the effective date of this AD represents an appropriate interval of time for affected airplanes to continue to operate without compromising safety. This difference has been coordinated with the CAA.

The service bulletins specify that, in lieu of replacing a corroded component with a serviceable component, operators may contact the manufacturer for information on the ''serviceability'' of corroded components. If any corrosion is found, this AD requires, before further flight, replacing the corroded component with a serviceable component, or repairing the corroded component using a method that we or the CAA (or its delegated agent) approve. In light of the type of repair that would be required to address the unsafe condition, and consistent with existing bilateral airworthiness agreements, we have determined that, for this AD, a repair we or the CAA approve would be acceptable for compliance with the repair provision of this AD.

Costs of Compliance

None of the airplanes affected by this action are on the U.S. Register. All airplanes affected by this AD are currently operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, we consider this AD necessary to ensure that the unsafe condition is addressed if any affected airplane is imported and placed on the U.S. Register in the future.

If an affected airplane is imported and placed on the U.S. Register in the future, the required actions would take about 7 work hours per airplane, at an average labor rate of $65 per work hour. Based on these figures, the estimated cost of the AD would be $455 per airplane.

FAA's Determination of the Effective Date

No airplane affected by this AD is currently on the U.S. Register. Therefore, providing notice and opportunity for public comment is unnecessary before this AD is issued, and this AD may be made effective in less than 30 days after it is published in the **Federal Register**.

Comments Invited

This AD is a final rule that involves requirements that affect flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to submit any relevant written data, views, or arguments regarding this AD. Send your comments to an address listed in the **ADDRESSES** section. Include ''Docket No. FAA–2005–22586; Directorate Identifier 2002–NM–258–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the AD that might suggest a need to modify it.

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

Examining the Docket

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify that the regulation:

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

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2005–20–19 BAE Systems (Operations) Limited (Formerly British Aerospace Regional Aircraft): Amendment 39–14315. Docket No. FAA–2005–22586; Directorate Identifier 2002–NM–258–AD.

Effective Date

(a) This AD becomes effective October 21, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all BAE Systems (Operations) Limited Model ATP airplanes, certificated in any category.

Unsafe Condition

(d) This AD results from reports of reduced thickness in localized areas of the engine sub-frame tubes due to corrosion, and reports that corrosion may also exist in the engine attachment struts in zone 5. The FAA is issuing this AD to prevent failure of the engine sub-frame tubes or the engine attachment struts, which could result in separation of an engine from the airplane.

Compliance

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

Inspections

(f) Within 180 days after the effective date of this AD, perform X-ray (radiographic) inspections for corrosion of the engine sub-frame tubes in Zone 1 and the engine attachment struts in Zone 5, in accordance with the Accomplishment Instructions of BAE Systems (Operations) Limited Service Bulletins ATP–54–18 and ATP–54–19, both dated March 2, 2001. Although the service bulletins referenced in this AD specify to submit inspection results to the manufacturer, this AD does not require that action.

Corrective Action

(g) If any corrosion is found during the inspections required by paragraph (f) of this AD: Before further flight, replace the corroded component with a serviceable component, in accordance with the Accomplishment Instructions of BAE Systems (Operations) Limited Service Bulletins ATP–54–18 and ATP–54–19, both dated March 2, 2001; or repair the corroded component in accordance with a method approved by either the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the Civil Aviation Authority (or its delegated agent).

Alternative Methods of Compliance (AMOCs)

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

(2) Before using any AMOC approved in accordance with 14 CFR 39.19 on any airplane to which the AMOC applies, notify the appropriate principal inspector in the

FAA Flight Standards Certificate Holding District Office.

Related Information

(i) British airworthiness directives 006–03–2001 and 007–03–2001 also address the subjects of this AD.

Material Incorporated by Reference

(j) You must use BAE Systems (Operations) Limited Service Bulletin ATP–54–18, dated March 2, 2001; and BAE Systems (Operations) Limited Service Bulletin ATP–54–19, dated March 2, 2001; to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference of these documents in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact British Aerospace Regional Aircraft American Support, 13850 Mclearen Road, Herndon, Virginia 20171, for a copy of this service information. You may review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, Nassif Building, Washington, DC; on the Internet at *http://dms.dot.gov;* or at the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on September 26, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–19832 Filed 10–5–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–22587; Directorate Identifier 2003–NM–266–AD; Amendment 39–14316; AD 2005–20–20]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A330–301, –321, –322, –341, and –342 Airplanes; and Model A340–200 and A340–300 Series Airplanes

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

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Airbus Model A330–301, –321, –322, –341, and –342 airplanes; and Model A340–200 and A340–300 series airplanes. This AD requires installing lockplates on the main landing gear (MLG) and center landing gear (CLG) wheel assemblies, as applicable, to keep the tie bolts in position in the wheel assembly in the event of a tie bolt failure. This AD results from reports of tie bolts that were broken or missing from the MLG wheel assembly; in some cases the wheels have ruptured and caused damage to other equipment in the adjacent area. We are issuing this AD to prevent damage to the wheel assembly and equipment in the area adjacent to the MLG and CLG, which could result in a decrease in braking function and possible runway over-run.

DATES: Effective October 21, 2005.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of October 21, 2005.

We must receive comments on this AD by December 5, 2005.

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

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

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

FOR FURTHER INFORMATION CONTACT: Tim Backman, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2797; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified us that an unsafe condition may exist on certain Airbus Model A330–301, –321, –322, –341, and –342 airplanes that are equipped with Messier-Goodrich main landing gear (MLG) wheel assemblies, part number (P/N) 3–1509–2; and Model A340–200 and A340–300 series airplanes that are equipped with center landing gear (CLG) and MLG wheel assemblies, P/N 3–1509–2. The DGAC advises that operators of Model A330 series airplanes fitted with the affected wheel assemblies reported tie bolts that were broken or missing from the MLG wheel assemblies. Investigations indicated that the tie bolts ruptured due to fatigue failure and subsequently migrated out of the tie bolt hole. As a consequence, in some cases the failed tie bolt caught on the brake unit and ruptured a wheel. This condition, if not corrected, could cause damage to the wheel assembly and equipment in the area adjacent to the MLG and CLG, which could result in a decrease in braking function and possible runway over-run.

Relevant Service Information

Airbus has issued Service Bulletin A330–32–3167, dated August 12, 2003 (for Model A330–301, –321, –322, and –342 airplanes); and Service Bulletin A340–32–4206, dated August 12, 2003 (for Model A340–211 and –212 airplanes; and Model A340–300 series airplanes). The service bulletins describe procedures for modifying the MLG and CLG, as applicable, by installing lockplates on the wheel assembly to keep the tie bolts in position in the wheel assembly in the event of a tie bolt failure. Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition. The DGAC mandated the service information and issued French airworthiness directives 2003–392(B) and 2003–393(B), both dated October 29, 2003, to ensure the continued airworthiness of these airplanes in France.

The service bulletins refer to Goodrich-Messier Service Bulletin 3–1509–32–5, dated August 12, 2003, as an additional source of service information for installing the lockplates.

FAA's Determination and Requirements of This AD

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

Therefore, we are issuing this AD to prevent damage to the wheel assembly and equipment in the area adjacent to the MLG or CLG, which could result in a decrease in braking function and possible runway over-run. This AD requires accomplishing the actions specified in the service information described previously, except as discussed under ''Difference Between the AD and the French Airworthiness Directives.''

Difference Between the AD and the French Airworthiness Directives

The applicability of French airworthiness directives 2003–392(B) and 2003–393(B) excludes airplanes on which Airbus Service Bulletins A330–32–3167 or A340–32–4206 (as applicable) were accomplished in service. However, we have not excluded those airplanes in the applicability of this AD; rather, this AD includes a requirement to accomplish the actions specified in those service bulletins. This requirement would ensure that the actions specified in the service bulletins and required by this AD are accomplished on all affected airplanes. Operators must continue to operate the airplane in the configuration required by this AD unless an alternative method of compliance is approved.

Clarification of Applicability

Although Airbus Service Bulletin A340–32–4206, dated August 12, 2003, does not include Airbus Model A340–213 in its effectivity, this AD includes Model A340–213 in the applicability. Model A340–213 is identified in the applicability of French airworthiness directive 2003–393(B) as being subject to the identified unsafe condition, and therefore, requires the same corrective actions as the other airplane models identified in Service Bulletin A340–32–4206.

Although Airbus Service Bulletin A330–32–3167, dated August 12, 2003, does not include Airbus Model A330–341 in its effectivity, this AD includes Model A330–341 in the applicability. Model A330–341 is identified in the applicability of French airworthiness directive 2003–392(B) as being subject to the identified unsafe condition, and therefore, requires the same corrective actions as the other airplane models identified in Service Bulletin A330–32–3167.

Costs of Compliance

None of the airplanes affected by this action are on the U.S. Register. All airplanes affected by this AD are currently operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, we consider this AD necessary to ensure that the unsafe condition is addressed if any affected airplane is imported and placed on the U.S. Register in the future.

The following table provides the estimated costs to comply with this AD for any affected airplane that might be imported and placed on the U.S. Register in the future.

ESTIMATED COSTS

Installation for Airbus Model—	Work hours	Average labor rate per hour	Parts cost	Cost per airplane
A330–301, –321, –322, –341, and –342 airplanes	6	$65	$29,888	$30,278
A340–200 and A340–300 series airplanes	8	65	37,360	37,880

FAA's Determination of the Effective Date

No airplane affected by this AD is currently on the U.S. Register. Therefore, providing notice and opportunity for public comment is unnecessary before this AD is issued, and this AD may be made effective in less than 30 days after it is published in the **Federal Register**.

Comments Invited

This AD is a final rule that involves requirements that affect flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to submit any relevant written data, views, or arguments regarding this AD. Send your comments to the address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2005–22587; Directorate Identifier 2003–NM–266–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the AD that might suggest a need to modify it.

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

Examining the Docket

You may examine the AD docket on the Internet at *http://dms.dot.gov,* or in person at the Docket Management Facility office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the DOT street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the Docket Management System receives them.

Authority for This Rulemaking

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

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

Regulatory Findings

We have determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between

the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that the regulation:

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

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2005–20–20 Airbus: Amendment 39–14316. Docket No. FAA–2005–22587; Directorate Identifier 2003–NM–266–AD.

Effective Date

(a) This AD becomes effective October 21, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Airbus Model A330–301, –321, –322, –341, and –342 airplanes; Model A340–211, –212, and –213 airplanes; and Model A340–311, –312, and –313 airplanes; certificated in any category; as identified in Airbus Service Bulletin A330–32–3167, dated August 12, 2003; and Airbus Service Bulletin A340–32–4206, dated August 12, 2003; as applicable.

Unsafe Condition

(d) This AD results from reports of tie bolts that were broken or missing from the main landing gear (MLG) wheel assembly; in some cases the wheels have ruptured and caused damage to other equipment in the adjacent area. We are issuing this AD to prevent damage to the wheel assembly and equipment in the area adjacent to the MLG and center landing gear (CLG), which could result in a decrease in braking function and possible runway over-run.

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.

Modification and Reidentification

(f) Within 12 months after the effective date of this AD, modify the MLG and CLG, as applicable, by installing lockplates on the wheel assembly. Do all actions in accordance with the Accomplishment Instructions of Airbus Service Bulletin A330–32–3167, dated August 12, 2003; or A340–32–4206, dated August, 12, 2003; as applicable.

Note 1: The service bulletins referenced in paragraph (f) of this AD refer to Goodrich-Messier Service Bulletin 3–1509–32–5, dated August 12, 2003; as an additional source of service information for installing the lockplates.

Alternative Methods of Compliance (AMOCs)

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

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

Related Information

(h) French airworthiness directives 2003–392(B) and 2003–393(B), both dated October 29, 2003, also address the subject of this AD.

Material Incorporated by Reference

(i) You must use Airbus Service Bulletin A330–32–3167, dated August 12, 2003; or Airbus Service Bulletin A340–32–4206, dated August 12, 2003; as applicable; to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference of these documents in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France, for a copy of this service information. You may review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, Nassif Building, Washington, DC; on the Internet at *http://dms.dot.gov*; or at the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*.

Issued in Renton, Washington, on September 26, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–19830 Filed 10–5–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–22588; Directorate Identifier 2005–NM–096–AD; Amendment 39–14317; AD 2005–20–21]

RIN 2120–AA64

Airworthiness Directives; Fokker Model F27 Mark 050 Airplanes

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

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Fokker Model F27 Mark 050 airplanes. This AD requires repetitive visual checks for oil leaks of both engines between the spinner and the engine cowling, and directly behind the heated intake lip of the engine; repetitive inspections for oil leaks at the feathering pump on both engines; and corrective actions if necessary. This AD results from reports of oil leakage at the engine feathering pump. We are issuing this AD to prevent oil loss from the feathering pump, which could cause the engine to shut down in flight.

DATES: This AD becomes effective October 21, 2005.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of October 21, 2005.

We must receive comments on this AD by December 5, 2005.

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

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

• Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Contact Fokker Services B.V., P.O. Box 231, 2150 AE Nieuw-Vennep, the Netherlands, for service information identified in this AD.

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

SUPPLEMENTARY INFORMATION:

Discussion

The Civil Aviation Authority—The Netherlands (CAA–NL), which is the airworthiness authority for the Netherlands, notified us that an unsafe condition may exist on certain Fokker Model F27 Mark 050 airplanes. The CAA–NL advises that a number of in-flight engine shut-downs have been reported on Fokker Model F27 Mark 050 airplanes. The shut-downs were caused by oil leakage at the engine feathering pump, which resulted from a damaged seal on one of the bobbins between the feathering pump and the engine reduction gearbox. The CAA–NL mandated several actions to prevent recurrence of the leakage. Since those actions were mandated, several operators have found oil leaks at the feathering pumps. Most of these leaks were discovered during pre-flight or overnight checks. Investigators have not identified the cause of the new leaks. Oil loss from the feathering pump, if not corrected, could cause the engine to shut down in flight.

Relevant Service Information

Fokker Services B.V. has issued All Operator Message (AOM) AOF50.037 (Ref TS04.57535), dated November 2, 2004. The AOM describes procedures for doing an external visual inspection for oil leaks before each take-off. The inspections are to be done in two specific areas of both engines: Between the spinner and the engine cowling, and directly behind the heated intake lip of the engine. The AOM states that either the flightcrew or the maintenance crew can perform this inspection. If any leak is found, the AOM specifies that further inspections are necessary before further flight, in accordance with the Fokker service bulletin described below. The AOM also states that operators should report cases of oil leakage and send failed O-rings to Fokker Services.

Fokker Services B.V. has also issued Service Bulletin SBF50–61–023, dated November 3, 2004. The service bulletin describes procedures for repetitive detailed inspections for oil leaks at the feathering pump on both engines. If any leak is found, the service bulletin provides procedures for the corrective actions of replacing the O-rings of the feathering pump bobbins and the mounting pad gasket (if installed) with new parts.

The CAA–NL mandated the service information and issued Dutch airworthiness directive 2004–129, dated November 3, 2004, to ensure the continued airworthiness of these airplanes in the Netherlands.

FAA's Determination and Requirements of This AD

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

Therefore, we are issuing this AD to prevent oil loss from the feathering pump, which could cause the engine to shut down in flight. This AD requires accomplishing the actions specified in the service information described previously.

Interim Action

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

Clarification of Inspections

Although the Dutch airworthiness directive specifies visually inspecting for oil leaks, this AD refers to that inspection as a ''visual check.'' We have determined that pilots may properly perform these visual checks because the checks do not require tools, precision measuring equipment, training, or pilot logbook endorsements, or the use of or reference to technical data that are not contained in the body of the AD.

Costs of Compliance

None of the airplanes affected by this action are on the U.S. Register. All airplanes affected by this AD are currently operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, we consider this AD necessary to ensure that the unsafe condition is addressed if any affected airplane is imported and placed on the U.S. Register in the future.

The following table provides the estimated costs to comply with this AD for any affected airplane that might be imported and placed on the U.S. Register in the future.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Cost per airplane
Pre-flight check, per cycle	1	$65	$65, per cycle.
Detailed inspection, per inspection cycle	1	65	65, per inspection cycle.

Changes to 14 CFR Part 39/Effect on the AD Relating to Special Flight Permits

On July 10, 2002, we issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's airworthiness directives system. The regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance (AMOC). This material is included in part 39, except that the office authorized to approve AMOCs is identified in each individual AD. However, as amended, part 39 provides for the FAA to add special requirements for operating an airplane to a repair facility to do the work required by an airworthiness directive. For purposes of this AD, we have determined that such a special flight permit is prohibited.

FAA's Determination of the Effective Date

No airplane affected by this AD is currently on the U.S. Register. Therefore, providing notice and opportunity for public comment is unnecessary before this AD is issued, and this AD may be made effective in less than 30 days after it is published in the **Federal Register**.

Comments Invited

This AD is a final rule that involves requirements that affect flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to submit any relevant written data, views, or arguments regarding this AD. Send your comments to an address listed in the **ADDRESSES** section. Include ''Docket No. FAA–2005–22588; Directorate Identifier 2005–NM–096–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the AD that might suggest a need to modify it.

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

Examining the Docket

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify that the regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;
2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2005–20–21 Fokker Services B.V.: Amendment 39–14317. Docket No. FAA–2005–22588; Directorate Identifier 2005–NM–096–AD.

Effective Date

(a) This AD becomes effective October 21, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Fokker Model F27 Mark 050 airplanes, certificated in any category, as identified in Fokker Service Bulletin SBF50–61–023, dated November 3, 2004.

Unsafe Condition

(d) This AD results from reports of oil leakage at the engine feathering pump. We are issuing this AD to prevent oil loss from the feathering pump, which could cause the engine to shut down in flight.

Compliance

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

Pre-Flight Checks

(f) Before the next flight after the effective date of this AD: Do a visual check for oil leaks between the spinner and the engine cowling, and from directly behind the heated intake lip, of both engines, in accordance with Fokker All Operator Message (AOM) AOF50.037 (Ref TS04.57535), dated November 2, 2004. Repeat the visual check thereafter before each flight. If any leak is found, before further flight, do the action in paragraph (g) of this AD.

Repetitive Detailed Inspections

(g) Except as required by paragraph (f) of this AD, at the applicable time in paragraph (g)(1) or (g)(2) of this AD: Do a detailed inspection for oil leaks at the feathering pump on both engines and do any applicable corrective action before further flight. Do all actions in accordance with the Accomplishment Instructions of Fokker Service Bulletin SBF50–61–023, dated November 3, 2004. Repeat the detailed inspection thereafter at the applicable interval in paragraph (g)(1) or (g)(2) of this AD.

(1) For airplanes identified in paragraph 1.A. ''Effectivity,'' sub-paragraph (1) of the service bulletin: Do the first inspection before the next flight after the effective date of this AD, and repeat the inspection thereafter before each flight.

(2) For airplanes identified in paragraph 1.A. ''Effectivity,'' sub-paragraph (2) of the service bulletin: Do the first inspection within 32 flight hours after the effective date of this AD, and repeat the inspection thereafter at intervals not to exceed 32 flight hours.

Note 1: For the purposes of this AD, a detailed inspection is: ''An intensive examination of a specific item, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally

supplemented with a direct source of good lighting at an intensity deemed appropriate. Inspection aids such as mirror, magnifying lenses, etc., may be necessary. Surface cleaning and elaborate procedures may be required.''

No Reporting Requirement

(h) Although Fokker AOM AOF50.037 (Ref TS04.57535), dated November 2, 2004, specifies that operators should report cases of oil leakage and send failed O-rings to Fokker Services B.V., this AD does not include that requirement.

Special Flight Permit

(i) Special flight permits (14 CFR 21.197 and 21.199) are not allowed.

Alternative Methods of Compliance (AMOCs)

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

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

Related Information

(k) Dutch airworthiness directive 2004–129, dated November 3, 2004, also addresses the subject of this AD.

Material Incorporated by Reference

(l) You must use Fokker All Operator Message AOF50.037 (Ref TS04.57535), dated November 2, 2004; and Fokker Service Bulletin SBF50–61–023, dated November 3, 2004; as applicable, to perform the actions that are required by this AD, unless the AD specifies otherwise. (Only page 1 of Fokker All Operator Message AOF50.037 (Ref TS04.57535), contains the issue date of the document; no other page of the document contains this information.) The Director of the Federal Register approved the incorporation by reference of these documents in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Fokker Services B.V., P.O. Box 231, 2150 AE Nieuw-Vennep, the Netherlands, for a copy of this service information. You may review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, Nassif Building, Washington, DC; on the Internet at *http://dms.dot.gov*; or at the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on September 26, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–19829 Filed 10–5–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–22032; Directorate Identifier 2005–NM–049–AD; Amendment 39–14308; AD 2005–20–14]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 B4–620, A310–304, A310–324, and A310–325 Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Airbus Model A300 B4–620, A310–304, A310–324, and A310–325 airplanes. This AD requires installing fused adaptors between the external wiring harness and the in-tank wiring at the connectors on the fuel tank wall of the auxiliary center tank (ACT). This AD results from fuel system reviews conducted by the manufacturer. We are issuing this AD to prevent an ignition source in the ACT, which, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane.

DATES: This AD becomes effective November 10, 2005.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of November 10, 2005.

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

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

FOR FURTHER INFORMATION CONTACT: Tim Backman, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2797; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Examining the Docket

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

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to certain Airbus Model A300 B4–620, A310–304, A310–324, and A310–325 airplanes. That NPRM was published in the **Federal Register** on August 8, 2005 (70 FR 45587). That NPRM proposed to require installing fused adaptors between the external wiring harness and the in-tank wiring at the connectors on the fuel tank wall of the auxiliary center tank (ACT).

Comments

We provided the public the opportunity to participate in the development of this AD. We received no comments on the NPRM or on the determination of the cost to the public.

Clarification of Alternative Method of Compliance (AMOC) Paragraph

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

Conclusion

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

Costs of Compliance

This AD affects about 2 airplanes of U.S. registry. The actions take about 52 work hours per airplane, at an average labor rate of $65 per work hour. Required parts cost about $5,410 per ACT (up to two ACTs per airplane). Based on these figures, the estimated cost of the AD for U.S. operators is $8,790 per ACT, per airplane.

Currently, there are no Model A300 B4–620 airplanes of U.S. registry with one or more ACTs. However, if an affected airplane is imported and placed on the U.S. Register in the future, the required actions would take about 52 work hours, at an average labor rate of $65 per work hour. Required parts would cost about $10,730 per ACT, per airplane. Based on these figures, we

estimate the cost of this AD to be $14,110 per ACT.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2005–20–14 Airbus: Amendment 39–14308. Docket No. FAA–2005–22032; Directorate Identifier 2005–NM–049–AD.

Effective Date

(a) This AD becomes effective November 10, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Airbus Model A300 B4–620, A310–304, A310–324, and A310–325 airplanes, certificated in any category; equipped with one or more auxiliary center tank (ACT), except those on which Airbus Modification 12471 has been accomplished in production.

Unsafe Condition

(d) This AD is prompted by the results of fuel system reviews conducted by the manufacturer. We are issuing this AD to prevent an ignition source in the ACT, which, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane.

Compliance

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

Modification

(f) Within 24 months after the effective date of this AD: Install fused adaptors between the external wiring harness and the in-tank wiring at the connectors on the fuel tank wall of the ACT by doing all the actions specified in the Accomplishment Instructions of the applicable service bulletin in Table 1 of this AD.

TABLE 1.—AIRBUS SERVICE BULLETINS

Airbus Service Bulletin	Date	Model
A300–28–6073	December 23, 2004	A300 B4–620 airplanes.
A310–28–2149	September 29, 2004	A310–304, A310–324, and A310–325 airplanes.

Alternative Methods of Compliance (AMOCs)

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

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

Related Information

(h) French airworthiness directive F–2005–021, dated February 2, 2005, also addresses the subject of this AD.

Material Incorporated by Reference

(i) You must use Airbus Service Bulletin A300–28–6073, dated December 23, 2004; or Airbus Service Bulletin A310–28–2149, dated September 29, 2004; as applicable, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference of these documents in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France, for a copy of this service information. You may review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, Nassif Building, Washington, DC; on the Internet at *http://dms.dot.gov;* or at the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on September 26, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–19844 Filed 10–5–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–21594; Directorate Identifier 2005–NM–067–AD; Amendment 39–14309; AD 2005–20–15]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–10–10 and DC–10–10F Airplanes; Model DC–10–15 Airplanes; Model DC–10–30 and DC–10–30F (KC–10A and KDC–10) Airplanes; Model DC–10–40 and DC–10–40F Airplanes; Model MD–10–10F and MD–10–30F Airplanes; and Model MD–11 and MD–11F Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain McDonnell Douglas transport category airplanes. This AD requires an inspection of the rudder pedal torque tube assembly for cracking; an inspection of the torque tube assembly to determine the thickness of the torque tube wall, if necessary; and replacing the rudder torque tube with a new or serviceable rudder torque tube, if necessary. This AD results from a report of a broken rudder pedal torque tube. We are issuing this AD to prevent failure of a rudder pedal torque tube, which could result in loss of rudder control and nose wheel steering controlled by the rudder pedal, and consequent reduced controllability of the airplane.

DATES: This AD becomes effective November 10, 2005.

The Director of the **Federal Register** approved the incorporation by reference of certain publications listed in the AD as of November 10, 2005.

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

Contact Boeing Commercial Airplanes, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024), for service information identified in this AD.

FOR FURTHER INFORMATION CONTACT: Maureen Moreland, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5238; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Examining the Docket

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

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to certain McDonnell Douglas Model DC–10–10 and DC–10–10F airplanes; Model DC–10–15 airplanes; Model DC–10–30 and DC–10–30F (KC–10A and KDC–10) airplanes; Model DC–10–40 and DC–10–40F airplanes; Model MD–10–10F and MD–10–30F airplanes; and Model MD–11 and MD–11F airplanes. That NPRM was published in the **Federal Register** on June 22, 2005 (70 FR 36070). That NPRM proposed to require an inspection of the torque tube assembly for the rudder pedal for cracking; an inspection of the torque tube assembly to determine the thickness of the torque tube wall, if necessary; and replacing the rudder torque tube with a new or serviceable rudder torque tube, if necessary.

Comments

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

Request To Revise Service Bulletin References

One commenter, the manufacturer, requests that we delete reference to Appendix B from paragraph (f) of the NPRM and delete reference to Appendix A from paragraph (g) of the NPRM. The commenter states that these revisions are consistent with the intent of Boeing Alert Service Bulletin DC10–27A236; and Boeing Alert Service Bulletin MD11–27A083, both dated February 17, 2005, and eliminate any potential confusion operators might have with the NPRM.

We agree with the request. We acknowledge that referencing both Appendices A and B in both paragraphs (f) and (g) of this AD might be confusing to operators. The service bulletins reference Appendix A for inspecting the rudder pedal torque tube assembly for cracks (required by paragraph (f) of this AD) and reference Appendix B for inspecting the rudder pedal torque tube to determine the thickness of the tube wall (required by paragraph (g) of this AD). Since the service bulletins reference the applicable appendix in the accomplishment instructions, we do not need to cite them in this AD. Therefore, we have deleted reference to both Appendix A and Appendix B from both paragraphs (f) and (g) of this AD.

Request To Revise the Format of the NPRM

The same commenter requests that we make the following editorial changes to the NPRM:

- Move the compliance time from paragraph (f) to paragraph (e) of the NPRM.
- Delete the compliance time from paragraph (g) of the NPRM.
- Clarify that the special detailed eddy current inspection is a ''one-time'' inspection of the ''rudder pedal torque tube assembly'' for ''existing'' cracks.
- Clarify that the special detailed ultrasonic inspection of the rudder pedal torque tube assembly is for ''minimum wall thickness.''
- Clarify that the unsafe condition ''* * * could result in ''partial'' loss of rudder control and nose wheel steering * * *.''
- State that replacement of the rudder torque tube, if necessary, is meant to ''insure the integrity of the system.''

The commenter states that these revisions are consistent with the intent of the referenced Boeing service bulletins, and would eliminate any potential confusion operators might have with the NPRM.

We partially agree. We have revised the Summary and paragraphs (f) and (g) of this AD to specify that the inspections are of the ''rudder pedal torque tube assembly.'' We disagree with moving the compliance time to paragraph (e) of this AD; the intent of that paragraph is to give credit for actions previously accomplished before issuance of this AD, so it would be inappropriate to include compliance times in that paragraph. We infer that the commenter requests to delete the compliance time from paragraph (g) of the NPRM because the commenter believes it is not necessary to include that information in the AD. We do not agree, since according to the service bulletins the inspection in paragraph (g) of this AD is an on-condition action that must be accomplished if no cracking is found during the inspection required by

paragraph (f) of this AD. This AD must state a compliance time for performing the on-condition inspection.

We also disagree with adding a phrase stating that the on-condition replacement ''* * * will insure the integrity of the system.'' The purpose of the **SUMMARY** section is to identify the required actions of an AD and the unsafe condition they are intended to address; it would be inappropriate to include any other information in this section. We have determined that the other revisions that the commenter suggests do not change the meaning of the AD in any substantive way. Therefore, no other change to this AD is necessary.

Request To Revise ''Cost of Compliance''

The same commenter requests that we revise the estimated work hours in the NPRM for replacing the rudder pedal torque tube. The commenter states that Boeing Alert Service Bulletin DC10–27A236 estimates that the proposed replacement would take 96 total work hours for Model DC–10–10 and DC–10–10F airplanes; Model DC–10–15 airplanes; Model DC–10–30 and DC–10–30F (KC–10A and KDC–10) airplanes; Model DC–10–40 and DC–10–40F airplanes; and Model MD–10–10F and MD–10–30F airplanes. The commenter also states that Boeing Alert Service Bulletin MD11–27A083 estimates that the proposed replacement would take 18 hours for Model MD–11 and MD–11F airplanes. These estimates include time for gaining access, removing and replacing the torque tube, adjusting (for Model MD–11 and MD–11F airplanes), and closing access.

We disagree. The estimated work hours in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions. Furthermore, replacement of the rudder pedal torque tube is an ''on-condition'' action. Typically, the ''Cost of Compliance'' is limited only to the cost of actions actually required by the rule. It does not consider the costs of ''on-condition'' actions because, regardless of AD direction, those actions would be required to correct an unsafe condition identified in an airplane and ensure operation of that airplane in an airworthy condition, as required by the Federal Aviation Regulations. Therefore, no change is necessary to this AD in this regard.

Request To Extend Compliance Time

One commenter requests that we extend the compliance time of the inspection from 6 months to 12 months after the effective date of the AD. The commenter states that 6 months is not enough time to inspect all of its 130 airplanes affected by the NPRM.

We do not agree, since the commenter has provided no technical justification for extending the compliance time. In developing an appropriate compliance time for this action, we considered the safety implications, the practical aspect of accomplishing the required inspection within a period of time that corresponds to the normal scheduled maintenance for most affected operators, and the recommendation of the manufacturer. However, according to the provisions of paragraph (h) of this AD, we may approve requests to adjust the compliance time if the request includes data that prove that the new compliance time would provide an acceptable level of safety.

Explanation of Changes Made to This AD

We have revised the ''Alternative Methods of Compliance (AMOCs)'' paragraph in this AD to clarify the delegation authority for Authorized Representatives for the Boeing Commercial Airplanes Delegation Option Authorization.

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

Conclusion

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

Costs of Compliance

There are about 960 airplanes of the affected design in the worldwide fleet. This AD affects about 366 airplanes of U.S. registry. The inspection takes about 16 work hours per airplane, at an average labor rate of $65 per work hour. Based on these figures, the estimated cost of the inspection for U.S. operators is $380,640, or $1,040 per airplane.

For Model DC–10–10 and DC–10–10F airplanes; Model DC–10–15 airplanes; Model DC–10–30 and DC–10–30F (KC–10A and KDC–10) airplanes; Model DC–10–40 and DC–10–40F airplanes; and Model MD–10–10F and MD–10–30F airplanes: The replacement if necessary takes about 16 work hours per airplane, at an average labor rate of $65 per work hour. Required parts cost about $12,892 per airplane. Based on these figures, the estimated cost of the replacement if necessary is $13,932 per airplane.

For Model MD–11 and MD–11F airplanes: The replacement if necessary takes about 5 work hours per airplane, at an average labor rate of $65 per work hour. Required parts cost about $12,892 per airplane. Based on these figures, the estimated cost of the replacement if necessary is $13,217 per airplane.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2005–20–15 McDonnell Douglas: Amendment 39–14309. Docket No. FAA–2005–21594; Directorate Identifier 2005–NM–067–AD.

Effective Date

(a) This AD becomes effective November 10, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to the airplanes identified in Table 1 of this AD; certificated in any category.

TABLE 1.—APPLICABILITY

McDonnell Douglas—	As identified in—
Model DC–10–10 and DC–10–10F airplanes; Model DC–10–15 airplanes; Model DC–10–30 and DC–10–30F (KC–10A and KDC–10) airplanes; Model DC–10–40 and DC–10–40F airplanes; and Model MD–10–10F and MD–10–30F airplanes.	Boeing Alert Service Bulletin DC10–27A236, dated February 17, 2005.
Model MD–11 and MD–11F airplanes	Boeing Alert Service Bulletin MD11–27A083, dated February 17, 2005.

Unsafe Condition

(d) This AD results from a report of a broken rudder pedal torque tube. We are issuing this AD to prevent failure of a rudder pedal torque tube, which could result in loss of rudder control and nose wheel steering controlled by the rudder pedal, and consequent reduced controllability of the airplane.

Compliance

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

Eddy Current Inspection and Replacement if Necessary

(f) Within 6 months after the effective date of this AD, do a special detailed eddy current inspection of the rudder pedal torque tube assembly for cracks, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin DC10–27A236, dated February 17, 2005; or Boeing Alert Service Bulletin MD11–27A083, dated February 17, 2005; as applicable. If any crack is found, before further flight, replace the rudder pedal torque tube with a new or serviceable rudder pedal torque tube, in accordance with the applicable service bulletin.

Ultrasonic Inspection and Replacement, if Necessary

(g) If no cracking is found during the special detailed eddy current inspection required by paragraph (f) of this AD, before further flight, do a special detailed ultrasonic inspection of the rudder pedal torque tube assembly to determine the wall thickness of the rudder pedal torque tube, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin DC10–27A236, dated February 17, 2005; or Boeing Alert Service Bulletin MD11–27A083, dated February 17, 2005; as applicable.

(1) If the wall thickness of the torque tube is within the limits identified as area C in Appendix B of the applicable service bulletin, no further action is required by this AD.

(2) If the wall thickness of the torque tube is within the limits identified as area B in Appendix B of the applicable service bulletin, within 6,000 flight hours after doing the special detailed ultrasonic inspection, replace the torque tube with a new or serviceable torque tube, in accordance with the applicable service bulletin.

(3) If the wall thickness of the torque tube is below the minimum limits, which are identified as area A in Appendix B of the applicable service bulletin, before further flight, replace the torque tube with a new or serviceable torque tube, in accordance with the applicable service bulletin.

Alternative Methods of Compliance (AMOCs)

(h)(1) The Manager, Los Angeles Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

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

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

Material Incorporated by Reference

(i) You must use Boeing Alert Service Bulletin DC10–27A236, dated February 17, 2005; or Boeing Alert Service Bulletin MD11–27A083, dated February 17, 2005, as applicable, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference of these documents in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Boeing Commercial Airplanes, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024), for a copy of this service information. You may review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, Nassif Building, Washington, DC; on the Internet at *http://dms.dot.gov;* or at the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on September 26, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–19869 Filed 10–5–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2005–21703; Airspace Docket No. 05–ACE–19]

Modification of Class D and Class E Airspace; Topeka, Forbes Field, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments; correction.

SUMMARY: This action corrects an error in the legal description of Class D airspace in a direct final rule, request for comments that was published in the **Federal Register** on Tuesday, July 12, 2005 (70 FR 39914).

DATES: This direct final rule is effective on 0901 UTC, October 27, 2005.

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:

History

Federal Register Document 2005–21703 published on Tuesday, July 12, 2005 (70 FR 39914), modified Class D and Class E Airspace at Topeka, Forbes Field, KS. The phrase ''This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.'' was incorrectly deleted from the legal description of Class D airspace. This action corrects that error.

■ Accordingly, pursuant to the authority delegated to me, the error in the legal description of Class D Airspace, Topeka, Forbes Field, KS as published in the **Federal Register** Tuesday July 12, 2005 (70 FR 39914), (FR Doc. 2005–21703), is corrected as follows:

PART 71—[CORRECTED]

§ 71.1 [Corrected]

On page 39915, Column 2, at the end of the legal description of ACE KS D Topeka, Forbes Field, KS, add the phrase ''This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.''

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

Elizabeth S. Wallis,

Acting Area Director, Western Flight Services Operations.

[FR Doc. 05–20046 Filed 10–5–05; 8:45am]

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; Correction.

SUMMARY: This action corrects an error in the legal description of a direct final rule, request for comments that was published in the **Federal Register** on Friday, July 29, 2005 (70 FR 43744).

DATES: This direct final rule is effective on 0901 UTC, October 27, 2005.

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:

History

Federal Register Document 2005–21874 published on Friday, July 29, 2005 (70 FR 43744), modified Class E Airspace at Dodge City, KS. The latitude and longitude used in the airport reference point was incorrect. This action corrects that error.

■ Accordingly, pursuant to the authority delegated to me, the errors for Class E Airspace, Dodge City, KS as published in the **Federal Register** Friday, July 29, 2005 (70 FR 43744), (FR Doc. 2005–21874), are corrected as follows:

PART 71—[CORRECTED]

§ 71.1 [Corrected]

On page 43745, Column 2, change the latitude and longitude of Dodge City Regional Airport, KS to (Lat. 37°45′48″ N., long. 99°57′56″ W.) for ACE KS E2 and ACE KS E5.

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

Elizabeth S. Wallis,

Acting Area Director, Western Flight Services Operations.

[FR Doc. 05–20047 Filed 10–5–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD01–05–029]

RIN 1625–AA09

Drawbridge Operation Regulations: Passaic River, NJ

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is temporarily changing the drawbridge operation regulations for the operation of the Route 280 Bridge, mile 5.8, across the Passaic River, at Harrison, New Jersey. Under this temporary rule the Route 280 Bridge may remain in the closed position for the passage of vessel traffic from March 1, 2006 through November 30, 2007. This temporary rulemaking is necessary to facilitate rehabilitation repairs at the bridge.

DATES: This rule is effective March 1, 2006 through November 30, 2007.

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 (CGD01–05–029) and are available for inspection or copying at the First Coast Guard District, Bridge Branch Office, 408 Atlantic Avenue, Boston, Massachusetts 02110, between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Joe Arca, Project Officer, First Coast Guard District, (212) 668–7165.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On June 2, 2005, we published a notice of proposed rulemaking (NPRM) entitled; Drawbridge Operation Regulations, Passaic River, New Jersey (70 FR 32278). We received no comments in response to the notice of proposed rulemaking. No public hearing was requested and none was held.

Background and Purpose

The Route 280 Bridge has a vertical clearance in the closed position of 35 feet at mean high water and 40 feet at mean low water. The existing drawbridge operation regulations are listed at 33 CFR 117.739(h). Under the existing operation regulations a 24-hour advance notice is required for bridge openings at all times.

The owner of the bridge, the New Jersey Department of Transportation, requested a temporary change to the

drawbridge operation regulations to facilitate rehabilitation maintenance at the bridge.

Under this temporary rule the bridge will remain in the closed position for the passage of vessel traffic from March 1, 2006 through November 30, 2007.

The Route 280 Bridge has not received any requests to open during the past ten years.

Discussion of Comments and Changes

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

Regulatory Evaluation

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

This conclusion is based on the fact that the bridge has not received any opening requests for the past ten years.

Small Entities

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

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

This conclusion is based on the fact that the bridge has not received any opening requests for the past ten years.

Assistance for Small Entities

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

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

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this final rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section

2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (32)(e), of the Instruction, from further environmental documentation. It has been determined that this final rule does not significantly impact the environment.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

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

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

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

■ 2. From March 1, 2006 through November 30, 2007, paragraph (h) in § 117.739 is temporarily suspended and a new paragraph (u) is added to read as follows:

§ 117.739 Passaic River.

* * * * *

(u) From March 1, 2006 through November 30, 2007, the Route 280 Bridge, mile 5.8, may remain in the closed position for the passage of vessel traffic.

Dated: September 25, 2005.

David P. Pekoske,

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

[FR Doc. 05–19950 Filed 10–5–05; 8:45 am]

BILLING CODE 4910–15–P

LIBRARY OF CONGRESS

Copyright Office

37 CFR Parts 201 and 256

[Docket No. 2005–2 CARP CRA]

Adjustment of Cable Statutory License Royalty Rates

AGENCY: Copyright Office, Library of Congress.

ACTION: Final rule.

SUMMARY: The Copyright Office of the Library of Congress is publishing final regulations governing the adjustment of the royalty rates for the cable statutory license.

DATES: These regulations are effective as of July 1, 2005.

FOR FURTHER INFORMATION CONTACT: Tanya M. Sandros, Associate General Counsel, or Gina Giuffreda, Attorney–Advisor, Copyright Arbitration Royalty Panel (CARP), P.O. Box 90779, Southwest Station, Washington, D.C. 20024. Telephone: (202) 707–8380. Telefax: (202) 252–3423.

SUPPLEMENTARY INFORMATION: Section 111 of the Copyright Act, 17 U.S.C., creates a statutory license for cable systems that retransmit to their subscribers over–the–air broadcast signals. Royalty fees for this license are calculated as percentages of a cable system's gross receipts received from subscribers for receipt of broadcast signals. A cable system's individual gross receipts determine the applicable percentages. These percentages, and the gross receipts limitations, are published in 37 CFR part 256 and are subject to adjustment at five–year intervals. 17 U.S.C. 801(b)(2)(A) & (D).[1] This was a window year for such an adjustment.

Such rate adjustment proceedings may be commenced upon receipt of a petition from a party with a significant interest in the royalty rates. The Library received two such petitions–one on behalf of the Office of the Commissioner of Baseball, the National Football League, the National Basketball Association, the Women's National Basketball Association, the National Hockey League, and the National Collegiate Athletic Association (collectively, the ''Joint Sports Claimants'') and the Motion Picture Association of America, Inc., its member companies and other producers and/or distributors of syndicated television programs (collectively, the ''Program Suppliers'') and the other from National Cable & Telecommunications Association (hereinafter ''NCTA''). In response to the Joint Sports Claimants/Program Suppliers' petition and before receipt of the NCTA petition, the Library published a **Federal Register** notice seeking comment on the former petition and directing interested parties to file a Notice of Intent to Participate in a Copyright Arbitration Royalty Panel (''CARP'') rate adjustment proceeding. 70 FR 16306 (March 30, 2005). The notice also designated a 30–day period to enable the parties to negotiate a new rate schedule. 37 CFR 251.63(a).

In accordance with the March 30 notice, the Office received one agreement submitted jointly by representatives of all of the parties who filed notices of intent to participate in this proceeding. The agreement proposed amending the basic royalty rates and the gross receipts limitations, the regulations governing the filing of the statements of account to reflect these changes, and proposed that the changes become effective beginning with the second semiannual accounting period of 2005. The agreement also noted that the syndex rates were not being adjusted for the new license period. In addition, the parties stated that they were unable to agree on whether or how to adjust the 3.75% rate set forth in § 256.2(c) but would continue their discussions and notify the Office, on or before August 10, 2005, as to whether they would seek such an adjustment.

Pursuant to § 251.63(b) of the CARP rules, the Library published in the **Federal Register** the proposed adjustments to the percentages of gross receipts paid by cable systems and the gross receipts limitations. 70 FR 41650 (July 20, 2005). Section 251.63(b) provides that the Library ''may adopt the rate embodied in the proposed settlement without convening an arbitration panel, provided that no opposing comment is received by the Librarian [of Congress] from a party with an intent to participate in a CARP proceeding.'' 37 CFR 251.63(b). No comments or Notices of Intent to Participate were received, enabling publication of today's final regulations adopting the proposed agreement.

These regulations are effective as of July 1, 2005, which means that the new cable rates and the gross receipts limitations are applicable to the second accounting period of 2005 and thereafter. Payment of royalties calculated on the basis of the new rates shall be due no later than March 1, 2006, for the accounting period beginning on July 1, 2005, and ending on December 31, 2005.

The parties to this proceeding have also notified the Copyright Office that they will not seek an adjustment of the 3.75% rate set forth in § 256.2(c). NCTA filed its notice with the Copyright Office on August 2, 2005, and a joint notice of intent not to seek adjustment of the 3.75% rate was filed on August 10, 2005, on behalf of the remaining parties. As no further adjustments of the cable rates are to be considered, the Library is terminating this proceeding, effective as of October 6, 2005. In future years, proceedings to adjust the section 111 cable royalty rates shall be considered by the Copyright Royalty Judges under a new program established by Congress with the passage of the Copyright Royalty and Distribution Reform Act of

[1] Unless otherwise noted, all references are to chapter 8 of title 17 of the United States Code as in effect prior to May 31, 2005, the effective date of the Copyright Royalty and Distribution Reform Act of 2004.

2004, Public Law 108–419, 118 Stat. 2341.

List of Subjects

37 CFR Part 201

Copyright, Procedures.

37 CFR Part 256

Cable television, Royalties.

Final Regulations

■ For the reasons set forth in the preamble, the Library amends 37 CFR parts 201 and 256 as follows:

PART 201—GENERAL PROVISIONS

■ 1. The authority citation for part 201 continues to read as follows:

Authority: 17 U.S.C. 702

§ 201.17 [Amended]

■ 2. Section 201.17 is amended as follows:
■ a. In paragraph (d)(2), by removing ''$379,600'' each place it appears and adding ''$527,600'' in its place;
■ b. In paragraph (e)(12), by removing ''$98,600'' and adding ''$137,100'' in its place; and
■ c. In paragraph (g)(2)(ii), by removing ''0.956'' and adding ''1.013'' in its place.

PART 256—ADJUSTMENT OF ROYALTY FEE FOR CABLE COMPULSORY LICENSE

■ 3. The authority citation for part 256 continues to read as follows:

Authority: 17 U.S.C. 702, 802

§ 256.2 [Amended]

■ 4. Section 256.2 is amended as follows:
■ a. In paragraph (a) introductory text, by removing the phrase ''the second semiannual accounting period of 2000'' and adding the phrase ''the second semiannual accounting period of 2005'' in its place;
■ b. In paragraph (a)(1), by removing ''.956'' and adding ''1.013'' in its place;
■ c. In paragraph (a)(2), by removing ''.956'' and adding ''1.013'' in its place;
■ d. In paragraph (a)(3), by removing ''.630'' and adding ''.668'' in its place;
■ e. In paragraph (a)(4), by removing ''.296'' and adding ''.314'' in its place;
■ f. In paragraph (b) introductory text, by removing the phrase ''the second semiannual accounting period of 2000'' and adding the phrase ''the second semiannual accounting period of 2005'' in its place;
■ g. In paragraph (b)(1), by removing ''$189,800'' each place it appears and adding ''$263,800'' in its place, and by removing $7,400'' and adding ''$10,400'' in its place; and
■ h. In paragraph (b)(2), by removing ''$189,800'' each place it appears, and adding ''$263,800'' in its place, and by removing ''$379,600'' each place it appears and adding ''$527,600'' in its place.

Dated: September 13, 2005

Marybeth Peters,

Register of Copyrights.

Approved by:

James H. Billington,

The Librarian of Congress.

[FR Doc. 05–20096 Filed 10–5–05; 8:45 am]

BILLING CODE 1410–33–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R10–OAR–2005–ID–0002; FRL–7977–5]

Approval and Promulgation of Implementation Plans; Idaho; Correcting Amendment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In this final action, EPA is correcting an error in the incorporation by reference provisions in the approval of revisions to the Rules for the Control of Air Pollution in Idaho (IDAPA 58.01.01) published on January 16, 2003 (68 FR 2217). This correction removes the list of State toxic air pollutants from the definition of ''regulated air pollutant'' in the EPA-approved Idaho State implementation plan.

DATES: This action is effective on November 7, 2005.

ADDRESSES: Copies of the State's request and other supporting information used in developing this action are available for inspection during normal business hours at the following locations: EPA, Office of Air, Waste, and Toxics (AWT–107), 1200 Sixth Avenue, Seattle, Washington 98101. Interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day. A reasonable fee may be charged for copies.

FOR FURTHER INFORMATION CONTACT: David C. Bray, Office of Air, Waste and Toxics, AWT–107, Environmental Protection Agency, Region 10, 1200 Sixth Ave., Seattle, WA 98101; phone: (206) 553–4253.

SUPPLEMENTARY INFORMATION:

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I. Background
II. This Action
A. What Comments Did We Receive on the Proposed Action?
B. What Is the Basis for This Action?
C. What Is our Final Action?
III. Statutory and Executive Order Reviews

I. Background

On January 16, 2003 (68 FR 2217), EPA approved numerous changes to the Idaho Department of Environmental Quality (IDEQ) rules as revisions to the Idaho State implementation plan (SIP). In that rulemaking, EPA did not approve the IDEQ rules for toxic air pollutants or TAP's and specifically excluded the toxic air pollutant provisions (IDAPA 58.01.01.203.03, 210, 223, 585, and 586) from its incorporation by reference. See 40 CFR 52.670(c)(37); 68 FR at 2224 (January 16, 2003); 67 FR 52666, 52668, 52672–73 (August 13, 2002). However, EPA inadvertently incorporated a cross reference to the toxic air pollutant provisions (Sections 585 and 586) within the IDEQ definition of ''regulated air pollutant'' (IDAPA 58.01.01.006(84)). It was EPA's intention to exclude all aspects of the IDEQ toxic air pollutant program from the federally-approved SIP.

EPA also received a request from the IDEQ to correct the inadvertent incorporation by reference. In an October 20, 2004 letter to EPA, the Administrator of the IDEQ Air Quality Division requested that EPA clarify or correct its approval of the Idaho SIP.

On July 20, 2005, EPA proposed to correct this error by amending the incorporation by reference of the Idaho SIP to exclude paragraph (f) from the definition of ''regulated air pollutant'' at IDAPA 58.01.01.006(84).

II. This Action

A. What Comments Did We Receive on the Proposed Action?

EPA provided a 30-day review and comment period on the proposal published in the **Federal Register** on July 20, 2005. 70 FR 41652. We received no comments on our proposed rulemaking.

B. What Is the Basis for This Action?

Under section 110(k)(6) of the Clean Air Act, whenever EPA determines that its action approving, disapproving, or promulgating any plan or plan revision (or part thereof), area designation, redesignation, classification, or reclassification was in error, EPA may in the same manner as the approval, disapproval, or promulgation revise such action as appropriate without requiring any further submission from the state. Such determination and the basis thereof shall be provided to the state and public. Pursuant to section

110(k)(6), EPA proposed a revision to the Idaho SIP to correct the inadvertent incorporation by reference of the Idaho toxic air pollutant provisions within the definition of ''regulated air pollutant.''

C. What Is Our Final Action?

EPA is taking final action to correct the incorporation by reference of the Idaho toxic air pollutant provisions so that IDEQ's list of toxic air pollutants will not be considered to be ''regulated air pollutants'' for purposes of the federally-approved SIP. All of the air pollutants regulated under the federal Clean Air Act will still be ''regulated air pollutants'' for SIP purposes in accordance with the IDEQ definition. The corrected definition meets or exceeds the requirements of the federal Clean Air Act and EPA's regulations for State implementation plans. The corrected definition is also consistent with IDEQ's SIP submittal and EPA's January 16, 2003 approval action which specifically excluded IDEQ's toxic air pollutant rules from the EPA-approved SIP.

III. Statutory and Executive Order Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this final 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 corrects the incorporation by reference of the list of toxic air pollutants used in regulatory provisions that are not part of the EPA-approved SIP and does not impose any additional requirements on state, local or tribal governments or the private sector. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

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

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 5, 2005. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: September 20, 2005.

Julie M. Hagensen,

Acting Regional Administrator, Region 10.

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

PART 52—[AMENDED]

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

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

Subpart N—Idaho

■ 2. In § 52.670(c), the table is amended by revising the entry for 006 to read as follows:

§ 52.670 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED IDAHO REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Explanations
Idaho Administrative Procedures Act (IDAPA) Chapter 58, Rules for Control of Air Pollution in Idaho, Previously Codified at IDAPA Chapter 39 (Appendix A.3)				
58.01.01—RULES FOR THE CONTROL OF AIR POLLUTION IN IDAHO				
*	*	*	*	*	*	*
006	General Definitions	4/5/00, 3/20/97, 5/1/95, 5/1/94	01/16/03, 68 FR 2217 10/6/05 [Insert page number where the document begins].	Except (84)(f)
*	*	*	*	*	*	*

[FR Doc. 05–19615 Filed 10–5–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R03–OAR–2004–PA–0001, R03–OAR–2004–PA–0002; FRL–7980–5]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Revision to the Motor Vehicle Enhanced I/M Program—Philadelphia, Pittsburgh, South Central, and Northern Regions and Safety Inspection Program Enhancements for Non-I/M Regions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving several State Implementation Plan (SIP) revisions submitted by the Commonwealth of Pennsylvania. These revisions amend Pennsylvania's existing, Federally-approved enhanced vehicle inspection and maintenance program (or I/M program) SIP. EPA is herein taking a single final rulemaking action to finalize two separately issued proposed rulemakings on the subject of Pennsylvania's I/M program. The intended effect of this combined final action is to approve the Commonwealth's revised I/M program SIP for the Philadelphia, Pittsburgh, South Central and Northern Regions. This action also serves to incorporate into the SIP a visual emission component inspection program done under the Commonwealth's annual safety inspection program in those 42 counties of Pennsylvania not subject to Federal I/M program requirements.

DATES: This final rule is effective on November 7, 2005.

ADDRESSES: EPA has established two dockets for this action under Regional Material in E-Docket (RME) ID Number R03–OAR–2004–PA–0001 and Number R03–OAR–2004–PA–0002. All documents in the docket are listed in the RME index at *http://www.docket.epa.gov/rmepub/.* Once in the system, select Aquick search,'' then key in the appropriate RME identification number for each docket. Although listed in the electronic docket, some information is not publicly available, *i.e.*, confidential business information (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 for public inspection 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 Pennsylvania Department of Environmental Protection, Bureau of Air Quality, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Brian Rehn, at (215) 814–2176, or by e-mail at *rehn.brian@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

EPA published two concurrent notices of proposed rulemaking (NPR) on April 26, 2005 proposing to approve two separate SIP revisions submitted by the Commonwealth of Pennsylvania. One of these April 26, 2005 NPRs (70 FR 21384) proposed approval of the Commonwealth's revised motor vehicle enhanced I/M program as it applies to select geographic regions of Pennsylvania. Pennsylvania regions affected by that rulemaking action include the South Central Region (Berks, Cumberland, Dauphin, Lancaster, Lebanon, Lehigh, Northampton, and York Counties) and the Northern Region (Blair, Cambria, Centre, Lackawanna, Luzerne, Lycoming, and Mercer Counties). EPA also proposed to approve portions of Pennsylvania's revised safety inspection program (for areas not subject to Federal enhanced I/M requirements) related to visual inspection of certain vehicle components that serve to reduce emissions. This emission component visual inspection element of the state safety inspection program is a new requirement for 42 Pennsylvania counties (see EPA's NPR for the complete list of affected counties). The Commonwealth's formal SIP revision, which was the subject of this notice, was submitted by Pennsylvania on December 1, 2003, and was revised via a technical SIP amendment submitted by Pennsylvania on April 29, 2004.

In the second of April 26, 2005 (70 FR 21380) rulemaking actions regarding Pennsylvania's I/M, EPA proposed approval of the revised enhanced I/M programs applicable in the Pittsburgh Region (Allegheny, Beaver, Washington, and Westmoreland Counties) and the Philadelphia Region (Bucks, Chester, Delaware, Montgomery, and Philadelphia Counties). The Commonwealth submitted a formal SIP revision on January 30, 2004 applicable only to these two Regions. This SIP revision was also revised by Pennsylvania via a technical SIP amendment submitted to EPA on April 29, 2004.

II. Summary of SIP Revision

EPA granted prior SIP approval to Pennsylvania's previously adopted I/M SIP in June 1999. Pennsylvania submitted formal SIP revisions to amend that SIP-approved I/M program

program on December 1, 2003 (as revised April 29, 2004) and January 30, 2004 (as revised April 29, 2004). Hereafter, we will refer to these SIP revisions as the December 2003 and the January 2004 SIPs, respectively.

These SIP revisions, when viewed together, requested incorporation of newly state-adopted provisions effecting the Pittsburgh, Philadelphia, South Central, and Northern I/M program regions of Pennsylvania. These Pennsylvania counties are required to implement enhanced I/M under authority of Sections 182 and 184 of the Clean Air Act.

The December 2003 SIP revision serves to amend Pennsylvania's I/M program applicable to the South Central and Northern Regions by replacing a previously SIP-approved tailpipe test requirement for the South Central Region with on-board diagnostic testing of 1996 and newer subject vehicles, coupled with gas cap testing on all 1975 and newer subject vehicles, and visual emission component inspection of pre-1996 vehicles. For the Northern Region, the Commonwealth's December 2003 SIP revision requires visual component inspections and gas cap testing on 1975 and newer vehicles. This SIP revision also adds visual emission component inspections to the Commonwealth's existing, annual safety inspection program as it applies in those regions of Pennsylvania not subject to I/M emissions testing under authority of the Clean Air Act (i.e., the non-I/M Region).

The Commonwealth's January 2004 SIP revision revises the I/M program for the Philadelphia and Pittsburgh Regions. Changes to the prior SIP-approved I/M program affecting these regions include addition of on-board diagnostic (or OBD) computer checks for 1996 and newer vehicles and revision of the I/M test regimen to phase out tailpipe testing on pre-1996 vehicles when those vehicles reach 25 years of age. The January 2004 SIP revision overlaps the December 2003 SIP in some regards, including incorporation of some of the same state regulatory provision (i.e., minor updates to the regulations made since the enhanced I/M program's inception in 1997) that are overarching in scope to all geographic areas to the Commonwealth.

For more detail on the substance of the changes to Pennsylvania's annual enhanced I/M and safety inspection programs, and the rationale for EPA's proposed actions, please refer to the two concurrently published EPA proposed rulemaking actions in the April 26, 2005 **Federal Register**, as that information is not be restated here in its entirety. No public comments were received on these two proposed rulemaking actions.

III. Final Action

EPA is approving Pennsylvania's enhanced I/M program SIP revisions submitted on December 2003 and January 2004 (as amended April 2005) as a single revision to the Pennsylvania SIP. While EPA took two separate, concurrent proposed rulemaking actions on these two SIP revisions on April 26, 2004, we have decided to take a single, combined final rulemaking action to approve them. The rationale for this decision is that both the December 2003 and the January 2004 SIP revisions contain portions of the same Pennsylvania emission inspection program regulation, which was published in the *Pennsylvania Bulletin* on November 22, 2003 (67 Pa Code Chapter 177). Pennsylvania initially submitted redacted portions of the same regulation as part of each separate SIP revision (submitted November 2003 and January 2004 SIP). Pennsylvania redacted those regulatory provisions not relevant to the geographic areas that were the subject of each SIP revision. Pennsylvania later amended each of the SIP revisions (via the April 29, 2004 technical correction SIP revision) to submit the entire, revised emission program regulation (67 Pa Code Chapter 177) as part of both SIP revisions. Since EPA received no adverse comments on our concurrent proposed rulemaking actions taken upon the December 2003 and the January 2004 SIP revisions, and in order to simplify incorporation by reference of Pennsylvania's emission program regulations into the Federal SIP, we are moving to take this single, combined final rulemaking action for these SIP revisions.

IV. Statutory and Executive Order Reviews

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal requirement, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

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

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small

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

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action to approve Pennsylvania's revised motor vehicle inspection and maintenance program must be filed in the United States Court of Appeals for the appropriate circuit by December 5, 2005. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: September 27, 2005.

Donald S. Welsh,

Regional Administrator, Region III.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart NN—Pennsylvania

■ 2. In § 52.2020, the table in paragraph (c)(1) is amended by revising the entries for Title 67, Chapters 175 and 177 to read as follows:

Subpart NN—Pennsylvania

§ 52.2020 Identification of plan.

* * * * *

(c) * * *

(1) * * *

State citation	Title/subject	State effective date	EPA approval date	Additional explanation/ § 52.2063 citation
*	*	*	*	*
Title 67. Transportation Part I. Department of Transportation Subpart A. Vehicle Code Provisions Article VII. Vehicle Characteristics				
Chapter 175 Vehicle Equipment and Inspection Subchapter A. General Provisions				
175.2	Definitions	9/27/97	6/17/99, 64 FR 32411	''Temporary Inspection Approval Indicator'' only.
175.2	Definitions	12/3/88	10/6/05 [*Insert page number where the document begins*]	Definitions which apply to safety inspection program in non-I/M counties.
175.3	Application of equipment rules.	12/3/88	10/6/05 [*Insert page number where the document begins*]	Applies to safety inspection program in non-I/M counties.
175.4	Vehicles required to be inspected.	12/3/88	10/6/05 [*Insert page number where the document begins*]	Applies to safety inspection program in non-I/M counties.
175.6	Annual inspection	12/3/88	10/6/05 [*Insert page number where the document begins*]	Applies to safety inspection program in non-I/M counties.
175.7	Inspection of vehicle reentering this Commonwealth.	12/3/88	10/6/05 [*Insert page number where the document begins*]	Applies to safety inspection program in non-I/M counties.
175.8	Newly purchased vehicles	2/19/94	10/6/05 [*Insert page number where the document begins*]	Applies to safety inspection program in non-I/M counties.
175.11	Coordination of safety and emission inspection.	9/27/97	6/17/99, 64 FR 32411	(c)(139)
Subchapter B. Official Inspection Stations				
175.21	Appointment	12/3/88	10/6/05 [*Insert page number where the document begins*]	Applies to safety inspection program in non-I/M counties.
175.22	Making application	12/3/88	10/6/05 [*Insert page number where the document begins*]	Applies to safety inspection program in non-I/M counties.
175.23(a) and (c)	Approval	12/3/88	10/6/05 [*Insert page number where the document begins*]	Applies to safety inspection program in non-I/M counties.

State citation	Title/subject	State effective date	EPA approval date	Additional explanation/ § 52.2063 citation
175.24	Required certificates and station signs.	12/3/88	10/6/05 [*Insert page number where the document begins*]	Applies to safety inspection program in non-I/M counties.
175.25(a), (b)(1), (b)(3), and (c).	Inspection area	12/3/88	10/6/05 [*Insert page number where the document begins*]	Applies to safety inspection program in non-I/M counties.
175.26(a) introductory sentence and (a)(3).	Tools and equipment	9/28/96	10/6/05 [*Insert page number where the document begins*]	Applies to safety inspection program in non-I/M counties.
175.27	Hours	12/3/88	10/6/05 [*Insert page number where the document begins*]	Applies to safety inspection program in non-I/M counties.
175.28 [Except for (c)(2), (g)(2), (g)(3), and (g)(5)–(9)].	Certified Inspection Mechanics.	12/3/88	10/6/05 [*Insert page number where the document begins*]	Applies to safety inspection program in non-I/M counties.
175.29	Obligations and responsibilities of stations.	9/27/97	10/6/05 [*Insert page number where the document begins*]	Applies to safety inspection program in non-I/M counties (except for (f)(4), which applies to I/M and non-I/M programs).
175.31	Fleet inspection stations	12/3/88	10/6/05 [*Insert page number where the document begins*]	Applies to safety inspection program in non-I/M counties.
Subchapter C. Certificate of Inspection				
175.41(a), (b)(1), (b)(3), (c), (d), (e)(1), (e)(3), (e)(5), and (f)(4).	Procedure	9/27/97	10/6/05 [*Insert page number where the document begins*]	Applies statewide (to I/M program and non-I/M safety inspection program.
175.42	Recording inspection	9/27/97	6/17/99, 64 FR 32411	
175.43	Security	9/27/97	6/17/99, 64 FR 32411	
175.44	Ordering certificates of inspection.	9/27/97	6/17/99, 64 FR 32411	
175.45	Violation of use of certificate of inspection.	9/27/97	6/17/99, 64 FR 32411	
Subchapter D. Schedule of Penalties and Suspensions: Official Inspection Stations and Certified Mechanics				
175.51	Cause for suspension	2/19/94	10/6/05 [*Insert page number where the document begins*]	New section; Applies to safety inspection program in non-I/M counties.
175.52	Reapplication	12/3/88	10/6/05 [*Insert page number where the document begins*]	New section; Applies to safety inspection program in non-I/M counties.
Subchapter E. Passenger Cars and Light Trucks				
175.61	Application of subchapter	12/3/88	10/6/05 [*Insert page number where the document begins*]	New section: Applies to safety inspection program in non-I/M counties.
175.72(d)	Fuel system	12/3/88	10/6/05 [*Insert page number where the document begins*]	New section; Applies to safety inspection program in non-I/M counties.
175.80(d)	Inspection procedure	5/13/99	10/6/05 [*Insert page number where the document begins*]	New section; Applies to safety inspection program in non-I/M counties.
Subchapter H. Motorcycles				
175.141	Application of subchapter	12/3/88	10/6/05 [*Insert page number where the document begins*]	New section; Applies to safety inspection program in non-I/M counties.
Subchapter J. Motor-Driven Cycles and Motorized Pedalcycles				
175.171	Application	12/3/88	10/6/05 [*Insert page number where the document begins*]	New section; Applies to safety inspection program in non-I/M counties.

State citation	Title/subject	State effective date	EPA approval date	Additional explanation/ § 52.2063 citation
Subchapter K. Street Rods, Specially Constructed and Reconstructed Vehicles				
175.201	Application of subchapter	12/3/88	10/6/05 [*Insert page number where the document begins*]	New section; Applies to safety inspection program in non-I/M counties.
175.202	Conditions	12/3/88	10/6/05 [*Insert page number where the document begins*]	Applies to safety inspection program in non-I/M counties.
175.220(d) [introductory sentence only].	Inspection procedure	5/13/99	10/6/05 [*Insert page number where the document begins*]	Applies to safety inspection program in non-I/M counties.
Subchapter L. Animal-Drawn Vehicles, Implements of Husbandry and Special Mobile Equipment				
175.221	Application	12/3/88	10/6/05 [*Insert page number where the document begins*]	
Chapter 177 Enhanced Emission Inspection Program Subchapter A. General Provisions				
177.1	Purpose	10/1/97	6/17/99, 64 FR 32411	(c)(139)
177.2	Application of equipment rules.	10/1/97	6/17/99, 64 FR 32411	(c)(139)
177.3	Definitions	11/22/03	10/6/05 [*Insert page number where the document begins*]	
Implementation of Emission Inspection Program				
177.22	Commencement of inspections.	11/22/03	10/6/05 [*Insert page number where the document begins*]	Retitled and revised.
177.23	Notification of requirement for emission inspection.	11/22/03	10/6/05 [*Insert page number where the document begins*]	
177.24	Program evaluation	11/22/03	10/6/05 [*Insert page number where the document begins*]	
I/M Program				
177.51	Program requirements	11/22/03	10/6/05 [*Insert page number where the document begins*]	Excludes paragraphs (c)(1), (c)(2), and (c)(3), and reference to those paragraphs.
177.52	Emission inspection prerequisites.	11/22/03	10/6/05 [*Insert page number where the document begins*]	
177.53	Vehicle inspection process	11/22/03	10/6/05 [*Insert page number where the document begins*]	
Subchapter B. Subject Vehicles				
177.101	Subject vehicles	11/22/03	10/6/05 [*Insert page number where the document begins*]	
177.102	Inspection of vehicles reentering this Commonwealth.	9/27/97	6/17/99, 64 FR 32411	(c)(139)
177.103	Used vehicles after sale or resale.	9/27/97	6/17/99, 64 FR 32411	(c)(139)
177.104	Vehicles registered in nondesignated areas or other states.	9/27/97	6/17/99, 64 FR 32411	(c)(139)
177.105	Vehicles requiring mission inspection due to change of address.	11/22/03	10/6/05 [*Insert page number where the document begins*]	

State citation	Title/subject	State effective date	EPA approval date	Additional explanation/ § 52.2063 citation
Subchapter C. Emission Test Procedures and Emission Standards				
General				
177.201	General requirements	11/22/03	10/6/05 [*Insert page number where the document begins*]	
177.202	Emission test equipment	11/22/03	10/6/05 [*Insert page number where the document begins*]	
177.202a	OBD–I/M check equipment	11/22/03	10/6/05 [*Insert page number where the document begins*]	New section.
177.202b	Equipment for gas cap test and visual inspection.	11/22/03	10/6/05 [*Insert page number where the document begins*]	New section.
177.203	Test procedures	11/22/03	10/6/05 [*Insert page number where the document begins*]	
177.204	Basis for failure	11/22/03	10/6/05 [*Insert page number where the document begins*]	Retitled and revised.
Recall Provisions				
177.231	Requirements regarding manufacturer recall notices.	9/27/97	6/17/99, 64 FR 32411	(c)(139)
177.232	Compliance with recall notices.	9/27/97	6/17/99, 64 FR 32411	(c)(139)
177.233	Failure to comply	9/27/97	6/17/99, 64 FR 32411	(c)(139)
Emission Inspection Report				
177.251	Record of test results	9/27/97	6/17/99, 64 FR 32411	(c)(139)
177.252	Emission inspection report	11/22/03	10/6/05 [*Insert page number where the document begins*]	Retitled and revised.
177.253	Responsibility of the station owner for vehicles which fail the emission inspection.	11/22/03	10/6/05, [*Insert page number where the document begins*]	Retitled and revised.
Retest				
177.271	Procedure	11/22/03	10/6/05 [*Insert page number where the document begins*]	
177.272	Prerequisites	11/22/03	10/6/05 [*Insert page number where the document begins*]	
177.273	Content of repair data form	11/22/03	10/6/05 [*Insert page number where the document begins*]	
177.274	Retest fees	11/22/03	10/6/05 [*Insert page number where the document begins*]	
177.275	Repair technician training and certification.	11/22/03	10/6/05	New section.
Issuance of Waiver				
177.281	Issuance of waiver	11/22/03	10/6/05 [*Insert page number where the document begins*]	
177.282	Annual adjustment of minimum waiver expenditure for emission inspection.	11/22/03	10/6/05 [*Insert page number where the document begins*]	Excludes/removes the sentence and partial sentence, "The minimum expenditure for the first 2 years after commencement of the program in an affected area is $150. Beginning with the 3rd year of the program in an affected area".

State citation	Title/subject	State effective date	EPA approval date	Additional explanation/ § 52.2063 citation
Procedures Relating to Certificates of Emission Inspection				
177.291	Procedures relating to certificates of emission inspection.	11/22/03	10/6/05 [*Insert page number where the document begins*]	Retitled and revised.
177.292	Recording inspection	11/22/03	10/6/05 [*Insert page number where the document begins*]	
On-Road Testing				
177.301	Authorization to conduct on-road emission testing.	9/27/97	6/17/99, 64 FR 32411	(c)(139)
177.302	On-road testing devices	9/27/97	6/17/99, 64 FR 32411	(c)(139)
177.304	Failure of on-road emission test.	11/22/03	10/6/05 [*Insert page number where the document begins*]	
177.305	Failure to produce proof of correction of on-road emission test failure.	9/27/97	6/17/99, 64 FR 32411	(c)(139)
Subchapter D. Official Emission Inspection Station Requirements General				
177.401	Appointment	11/22/03	10/6/05 [*Insert page number where the document begins*]	
177.402	Application	9/27/97	6/17/99, 64 FR 32411	(c)(139)
177.403	Approval of emission inspection station.	9/27/97	6/17/99, 64 FR 32411	(c)(139)
177.404	Required certificates and station signs.	11/22/03	10/6/05 [*Insert page number where the document begins*]	
177.405	Emission inspection areas	11/22/03	10/6/05 [*Insert page number where the document begins*]	
177.406	Equipment	11/22/03	10/6/05 [*Insert page number where the document begins*]	Retitled and revised.
177.407	Hours of operation	11/22/03	10/6/05 [*Insert page number where the document begins*]	
177.408	Certified emission inspectors	11/22/03	10/6/05 [*Insert page number where the document begins*]	
Obligations and Responsibilities of Station Owners/Agents				
177.421	Obligations and responsibilities of station owners/agents.	11/22/03	10/6/05 [*Insert page number where the document begins*]	
177.422	Commonwealth emission inspection stations.	11/22/03	10/6/05 [*Insert page number where the document begins*]	Retitled and revised.
177.423	Fleet emission inspection stations.	11/22/03	10/6/05 [*Insert page number where the document begins*]	Retitled and revised.
177.424	General emission inspection stations.	11/22/03	10/6/05 [*Insert page number where the document begins*]	
177.425	Security	11/22/03	10/6/05 [*Insert page number where the document begins*]	
177.426	Ordering certificates of emission inspection.	9/27/97	6/17/99, 64 FR 32411	(c)(139)
177.427	Violations of use of certificate of emission inspection.	9/27/97	6/17/99, 64 FR 32411	(c)(139)

State citation	Title/subject	State effective date	EPA approval date	Additional explanation/ § 52.2063 citation
		Quality Assurance		
177.431	Quality assurance	11/22/03	10/6/05 [*Insert page number where the document begins*]	
		Subchapter E. Equipment Manufacturers' and Contractors' Requirements and Obligations Equipment Manufacturers' Requirements		
177.501	Equipment approval procedures.	11/22/03	10/6/05 [*Insert page number where the document begins*]	
177.502	Service commitment	11/22/03	10/6/05 [*Insert page number where the document begins*]	
177.503	Performance commitment	11/22/03	10/6/05 [*Insert page number where the document begins*]	
177.504	Revocation of approval	9/27/97	6/17/99, 64 FR 32411	(c)(139)
		Contractor Obligations		
177.521	Contractor obligations and responsibilities.	11/22/03 [	10/6/05 [*Insert page number where the document begins*]	
		Subchapter F. Schedule of Penalties and Hearing Procedure Schedule of Penalties and Suspensions		
177.601	Definitions	11/22/03	10/6/05 [*Insert page number where the document begins*]	New section.
177.602	Schedule of penalties for emission inspection stations.	11/22/03	10/6/05 [*Insert page number where the document begins*]	
177.603	Schedule of penalties for emission inspectors.	11/22/03	10/6/05 [*Insert page number where the document begins*]	
		Additional Violations		
177.605	Subsequent violations	11/22/03	10/6/05 [*Insert page number where the document begins*]	
177.606	Multiple violations	9/27/97	6/17/99, 64 FR 32411	(c)(139)
		Departmental Hearing Procedure		
177.651	Notice of alleged violation and opportunity to be heard prior to immediate suspension.	11/22/03	10/6/05 [*Insert page number where the document begins*]	Retitled and revised.
177.652	Official documents	09/27/97	6/17/99, 64 FR 32411	(c)(139)
		Restoration After Suspension		
177.671	Restoration of certification of an emission inspector after suspension.	9/27/97	6/17/99, 64 FR 32411	(c)(139)
177.672	Restoration of certification of an emission inspection station after suspension.	9/27/97	6/17/99, 64 FR 32411	(c)(139)
177.673	Restoration of certification of certified repair technician after suspension.	9/27/97	6/17/99, 64 FR 32411	(c)(139)
		Registration Recall Procedure for Violation of §§ 177.301–177.305 (Relating to On-Road Resting)		
177.691	Registration Recall Committee.	11/22/03	10/6/05 [*Insert page number where the document begins*]	

State citation	Title/subject	State effective date	EPA approval date	Additional explanation/ § 52.2063 citation
Appendix A	Acceleration Simulation Mode: Pennsylvania Procedures, Standards, Equipment Specifications and Quality Control Requirements.	11/22/03	10/6/05 [*Insert page number where the document begins*]	Replaces previous Appendix A.
Appendix B	Department Procedures and Specifications.	11/22/03	10/6/05 [*Insert page number where the document begins*]	Replaces previous Appendix B.

* * * * *

[FR Doc. 05–20003 Filed 10–5–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TN–200507; FRL–7972–5]

Approval and Promulgation of Air Quality Implementation Plans; Nashville-Davidson County; Revised Format for Materials Being Incorporated by Reference

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; notice of administrative change.

SUMMARY: EPA is revising the format of part 52 of Title 40 of the Code of Federal Regulations (40 CFR part 52) for materials submitted by Nashville-Davidson County that are incorporated by reference (IBR) into the State Implementation Plan (SIP). The regulations affected by this format change have all been previously submitted by the local agency and approved by EPA.

This format revision will affect the ''Identification of Plan'' sections of 40 CFR part 52, by adding a table for the Nashville-Davidson portion of the Tennessee SIP. This revision will also affect the format of the SIP materials that will be available for public inspection at the Office of the Federal Register (OFR), the Air and Radiation Docket and Information Center, and the Regional Office.

DATES: This action is effective October 6, 2005.

ADDRESSES: SIP materials which are incorporated by reference into 40 CFR part 52 are available for inspection at the following locations: EPA, Region 4, 61 Forsyth Street, SW., Atlanta, GA 30303; the EPA, Air and Radiation Docket and Information Center, Air Docket (Mail Code 6102T), 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

FOR FURTHER INFORMATION CONTACT: Ms. Stacy DiFrank at the above Region 4 address or at (404) 562–9042. Email: *difrank.stacy@epa.gov.*

SUPPLEMENTARY INFORMATION: Each state has a SIP containing the control measures and strategies used to attain and maintain the national ambient air quality standards (NAAQS). The SIP is extensive, containing such elements as air pollution control regulations, emission inventories, monitoring networks, attainment demonstrations, and enforcement mechanisms.

Each state must formally adopt the control measures and strategies in the SIP after the public has had an opportunity to comment on them and then submit the SIP to EPA. Once these control measures and strategies are approved by EPA, after notice and comment, they are incorporated into the federally approved SIP and are identified in 40 CFR part 52 ''Approval and Promulgation of Implementation Plans.'' The full text of the state regulation approved by EPA is not reproduced in its entirety in 40 CFR part 52, but is ''incorporated by reference.'' This means that EPA has approved a given state regulation with a specific effective date. The public is referred to the location of the full text version should they want to know which measures are contained in a given SIP. The information provided allows EPA and the public to monitor the extent to which a state implements a SIP to attain and maintain the NAAQS and to take enforcement action if necessary.

The SIP is a living document which the state can revise as necessary to address the unique air pollution problems in the state. Therefore, EPA from time to time must take action on SIP revisions containing new and/or revised regulations as being part of the SIP. On May 22, 1997, (62 FR 27968), EPA revised the procedures for IBR into the Code of Federal Regulations, materials submitted by states in their EPA-approved SIP revisions. These changes revised the format for the identification of the SIP in 40 CFR part 52, streamlined the mechanisms for announcing EPA approval of revisions to a SIP, and streamlined the mechanisms for EPA's updating of the IBR information contained for each SIP in 40 CFR part 52. Pursuant to these revised procedures, EPA is revising the format for the identification of the Nashville-Davidson County portion of the Tennessee SIP, appearing in 40 CFR part 52. EPA has previously revised the format for the identification of the Tennessee SIP and the Memphis Shelby County, Knox County and Chattanooga portions of the SIP.

EPA has determined that today's action falls under the ''good cause'' exemption in section 553(b)(3)(B) of the Administrative Procedure Act (APA) which, upon finding ''good cause,'' authorizes agencies to dispense with public participation, and APA section 553(d)(3) which allows an agency to make an action effective immediately (thereby avoiding the 30-day delayed effective date otherwise provided for in the APA). Today's administrative action simply codifies provisions which are already in effect as a matter of law in Federal and approved state programs. Under section 553 of the APA, an agency may find good cause where procedures are ''impractical, unnecessary, or contrary to the public interest.'' Public comment for this administrative action is ''unnecessary'' and ''contrary to the public interest'' since the codification only reflects existing law. Immediate notice of this action in the **Federal Register** benefits the public by providing the public notice of the Nashville-Davidson County portion of the Tennessee SIP in Tennessee's ''Identification of Plan'' portion of the **Federal Register**.

Statutory and Executive Order Reviews

A. General Requirement

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this administrative action is not a ''significant regulatory action'' and is therefore not subject to review by the Office of Management and Budget. This action is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866. Because the Agency has made a ''good cause'' finding that this action is not subject to notice-and-comment requirements under the APA or any other statute as indicated in the Supplementary Information section above, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C 601 *et seq.*), or to sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). In addition, this action does not significantly or uniquely affect small governments or impose a significant intergovernmental mandate, as described in sections 203 and 204 of UMRA. This administrative action also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This administrative action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant. This administrative action does not involve technical standards; thus the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This administrative action also does not involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). This administrative action does not impose an information collection burden under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). EPA's compliance with these Statutes and Executive Orders for the underlying rules are discussed in previous actions taken on Nashville-Davidson County, Tennessee's rules.

B. Submission to Congress and the Comptroller General

The Congressional Review Act (CRA) (5 U.S.C. 801 *et seq.*), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. Today's administrative action simply codifies provisions which are already in effect as a matter of law in Federal and approved State programs. 5 U.S.C. 808(2). These announced actions were effective when EPA approved them through previous rulemaking actions. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this action in the **Federal Register**. This revision to Nashville-Davidson's portion of the Tennessee SIP in the ''Identification of Plan'' section of 40 CFR part 52 is not a ''major rule'' as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

EPA has also determined that the provisions of section 307(b)(1) of the Clean Air Act pertaining to petitions for judicial review are not applicable to this action. This action is simply an announcement of prior rulemakings that have previously undergone notice-and-comment rulemaking. Prior EPA rulemaking actions for each individual component of the Nashville-Davidson portion of the Tennessee SIP previously afforded interested parties the opportunity to file a petition for judicial review in the United States Court of Appeals for the appropriate circuit within 60 days of such rulemaking action.

List of Subjects in 40 CFR Part 52

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

Dated: September 8, 2005.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart RR—Tennessee

■ 2. Section 52.2220 is amended by:
■ A. Revising paragraph (b), and
■ B. Adding table 5 in paragraph (c) for Nashville-Davidson County, ''EPA Approved Nashville-Davidson County Regulations'' to read as follows:

§ 52.2220 Identification of plan.

* * * * *

(b) Incorporation by reference.

(1) Material listed in paragraph (c) of this section with an EPA approval date prior to December 1, 1998, for Tennessee (Table 1, the Tennessee State Implementation Plan), January 1, 2003 for Memphis Shelby County (Table 2, the Memphis Shelby County portion of the Tennessee State Implementation Plan), March 1, 2005, for Knox County (Table 3, the Knox County portion of the Tennessee State Implementation Plan), April 1, 2005 for Chattanooga, Tennessee (Table 4, the Chattanooga portion of the Tennessee State Implementation Plan), April 1, 2005, for Nashville-Davidson County (Table 5, the Nashville-Davidson County portion of the Tennessee State Implementation Plan) and paragraph (d) of this section with an EPA approval date prior to December 1, 1998, was approved for incorporation by reference by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Material is incorporated as it exists on the date of the approval, and notice of any change in the material will be published in the **Federal Register**. Entries in paragraph (c) of this section with EPA approval dates after December 1, 1998, for Tennessee (Table 1, the Tennessee State Implementation Plan), January 1, 2003 for Memphis Shelby County (Table 2, the Memphis Shelby County portion of the Tennessee State Implementation Plan), March 1, 2005, for Knox County (Table 3, the Knox County portion of the Tennessee State Implementation Plan), April 1, 2005 for Chattanooga (Table 4, the Chattanooga portion of the Tennessee State Implementation Plan), April 1, 2005, for Nashville-Davidson County (Table 5, the Nashville-Davidson County portion of

the Tennessee State Implementation Plan) and paragraph (d) of this section with an EPA approval date prior to December 1, 1998, will be incorporated by reference in the next update to the SIP compilation.

(2) EPA Region 4 certifies that the rules/regulations provided by EPA in the SIP compilation at the addresses in paragraph (b)(3) of this section are an exact duplicate of the officially promulgated State rules/regulations which have been approved as part of the State implementation plan as of the dates referenced in paragraph (b)(1).

(3) Copies of the materials incorporated by reference may be inspected at the Region 4 EPA Office at 61 Forsyth Street, SW., Atlanta, GA 30303; the EPA, Air and Radiation Docket and Information Center, Air Docket (Mail Code 6102T), 1200 Pennsylvania Avenue, NW., Washington, DC 20460 and the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

TABLE 5.—EPA APPROVED NASHVILLE-DAVIDSON COUNTY, REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Explanation
Chapter 10.56. Air Pollution Control				
Section 10.56.010	Definitions	03/12/97	12/31/98, 63 FR 72195	
Article I. Administration and Enforcement				
Section 10.56.020 +	Construction Permits	10/06/94	09/06/96, 61 FR 47057	
Section 10.56.040	Operating Permit	12/14/95	05/30/97, 62 FR 29301	
Section 10.56.050	Exemptions	12/14/95	05/30/97, 62 FR 29301	
Section 10.56.060	Transferability of Permit	10/06/94	09/06/96, 61 FR 47057	
Section 10.56.070	Suspension or Revocation of Permit	10/06/94	09/06/96, 61 FR 47057	
Section 10.56.080	Permit and Annual Emission Fees	03/12/97	12/31/98, 63 FR 72195	
Section 10.56.090	Board—Powers and Duties	10/06/94	09/06/96, 61 FR 47057	
Section 10.56.100	Board—Consideration of Facts and Circumstances.	10/06/94	09/06/96, 61 FR 47057	
Section 10.56.110	Rules and Regulations —Hearings Procedure	10/06/94	09/06/96, 61 FR 47057	
Section 10.56.120	Complaint Notice—Hearings Procedure	10/06/94	09/06/96, 61 FR 47057	
Section 10.56.130	Variances—Hearings Procedure	10/06/94	09/06/96, 61 FR 47057	
Section 10.56.140	Emergency Measures—Hearings Procedure	10/06/94	09/06/96, 61 FR 47057	
Article II. Standards for Operation				
Section 10.56.160	Ambient Air Quality Standards	03/12/97	12/31/98, 63 FR 72195	
Section 10.56.170	Emission of Gases, Vapors or Objectionable Odors.	10/06/94	09/06/96, 61 FR 47057	
Section 10.56.180	Laundry Operations—Dryer and Vent Pipe Requirements.	10/06/94	09/06/96, 61 FR 47057.	
Section 10.56.190	Controlling Wind-Borne Materials	10/06/94	09/06/96, 61 FR 47057	
Section 10.56.200	Sale, Use or Consumption of Solid and Liquid Fuels.	10/06/94	09/06/96, 61 FR 47057	
Section 10.56.220	Fuel-Burning Equipment	10/06/94	09/06/96, 61 FR 47057	
Section 10.56.230	Incinerators	10/06/94	09/06/96, 61 FR 47057	
Section 10.56.240	Internal Combustion Engines	12/14/95	05/30/97, 62 FR 29301	
Section 10.56.250	Open Burning	10/06/94	09/06/96, 61 FR 47057	
Section 10.56.260	Process Emissions	10/06/94	09/06/96, 61 FR 47057	
Section 10.56.270	Visible Emissions	10/06/94	09/06/96, 61 FR 47057	
Section 10.56.280	Start-ups, Shutdowns and Malfunctions	03/12/97	12/31/98, 63 FR 72195	
Section 10.56.290	Measurement and Reporting of Emissions	10/06/94	09/06/96, 61 FR 47057	
Section 10.56.300	Testing Procedures	10/06/94	09/06/96, 61 FR 47057	
Section 10.56.310	Severability	10/06/94	09/06/96, 61 FR 47057	
Regulation No. 1	Prevention, Abatement and Control of Air Control Contaminants from Open Burning.	06/28/79	08/13/80, 45 FR 53810.	
Regulation No. 2	Prevention, Abatement and Control of Air Contaminants from Materials Subject to Becoming Windborne.	06/28/79	08/13/80, 45 FR 53810.	
Regulation No. 3	New Source Review.			
Section 3–1	Definitions	11/13/96	06/17/97, 62 FR 32688.	
Section 3–2	Registration and Permits	11/13/96	06/17/97, 62 FR 32688.	
Section 3–3	Prevention of Significant Deterioration (PSD) Review.	11/13/96	06/17/97, 62 FR 32688.	
Regulation No. 6	Emission Monitoring of Stationary Sources.			
Section 6.1	Definitions	05/22/77	03/22/78, 43 FR 11819.	
Section 6.2	Monitoring of Emissions	05/22/77	03/22/78, 43 FR 11819.	
Section 6.3	Equipment Specifications	05/22/77	03/22/78, 43 FR 11819.	
Section 6.4	Monitoring System Malfunction	05/22/77	03/22/78, 43 FR 11819.	
Section 6.5	Recording and Reporting	05/22/77	03/22/78, 43 FR 11819.	
Section 6.6	Data Reduction	05/22/77	03/22/78, 43 FR 11819.	
Regulation No. 7	Regulation for Control of Volatile Organic Compounds.			

TABLE 5.—EPA APPROVED NASHVILLE-DAVIDSON COUNTY, REGULATIONS—Continued

State citation	Title/subject	State effective date	EPA approval date	Explanation
Section 7–1	Definitions	11/13/96	06/17/97, 62 FR 32688.	
Section 7–2	General Provisions and Applicability	11/13/96	06/17/97, 62 FR 32688.	
Section 7–3	Petition for Alternative Controls	12/10/91	06/26/92, 57 FR 28625.	
Section 7–4	Compliance Certification, Recordkeeping and Reporting Requirements.	11/13/96	06/17/97, 62 FR 32688.	
Section 7–5	Emission Standards for Coil Coating	11/13/96	06/17/97, 62 FR 32688.	
Section 7–6	Emission Standards for Paper Coating	11/13/96	06/17/97, 62 FR 32688.	
Section 7–7	Emission Standards for Fabric and Vinyl Coating	11/13/96	06/17/97, 62 FR 32688.	
Section 7–8	Emission Standards for Metal Furniture Coating	11/13/96	06/17/97, 62 FR 32688.	
Section 7–9	Emission Standards for Surface Coating of Large Appliances.	11/13/96	06/17/97, 62 FR 32688.	
Section 7–10	Petroleum Liquid Storage	11/13/96	06/17/97, 62 FR 32688.	
Section 7–11	Bulk Gasoline Plants	12/10/91	06/26/92, 57 FR 28265.	
Section 7–12	Bulk Gasoline Terminals	12/10/91	06/26/92, 57 FR 28265.	
Section 7–13	Gasoline Dispensing Facility, Stage 1	12/10/91	06/26/92, 57 FR 28265.	
Section 7–14	Solvent Metal Cleaning	12/10/91	06/26/92, 57 FR 28265.	
Section 7–15	Prohibition of Cutback Asphalt	12/10/91	06/26/92, 57 FR 28265.	
Section 7–16	Emission Standards for Surface Coating of Miscellaneous Metal Parts and Products.	07/09/97	10/08/98, 63 FR 54053.	
Section 7–17	Manufacture of Pneumatic Tires	11/13/96	06/17/97, 62 FR 32688.	
Section 7–18	Graphic Arts—Rotogravure and Flexography	12/10/91	06/26/92, 57 FR 28265.	
Section 7–20	Petroleum Solvent Dry Cleaners	11/13/96	06/17/97, 62 FR 32688.	
Section 7–21	Volatile Organic Liquid Storage In External Floating Roof Tanks.	11/13/96	06/17/97, 62 FR 32688.	
Section 7–22	Leaks from Synthetic Organic Chemical, Polymer, and Resin Manufacturing Equipment.	11/13/96	06/17/97, 62 FR 32688.	
Section 7–23	Air Oxidation Processes in the Synthetic Organic Chemical Manufacturer's Industry.	11/13/96	06/17/97, 62 FR 32688.	
Section 7–24	Test Methods and Procedures	11/13/96	06/17/97, 62 FR 32688.	
Section 7–26	Special Provisions for New Volatile Organic Compund Sources and Modifications.	11/13/96	06/17/97, 62 FR 32688.	
Section 7–27	Handling, Storage, Use, and Disposal of Volatile Organic Compounds (VOC).	11/13/96	06/17/97, 62 FR 32688.	
Section 7–28	Surface Coating of Plastic Parts	11/13/96	06/17/97, 62 FR 32688.	
Regulation No. 8	Regulation of Emissions from Light-Duty Motor Vehicles Through Mandatory Vehicle Inspection and Maintenance Program.			
Section 8–1	Definitions	10/04/94	07/28/95, 60 FR 28694.	
Section 8–2	Motor Vehicle Inspection Requirement	10/04/94	07/28/95, 60 FR 28694.	
Section 8–3	Exemption from Motor Vehicle Inspection Equipment.	10/04/94	07/28/95; 60 FR 28694.	
Section 8–4	Motor Vehicle Emission Performance Test Criteria.	10/04/94	07/28/95, 60 FR 28694.	
Section 8–5	Motor Vehicle Anti-Tampering Test Criteria	10/04/94	07/28/95, 60 FR 28694.	
Section 8–6	Motor Vehicle Emissions Performance Test Methods.	10/04/94	07/28/95, 60 FR 28694.	
Section 8–7	Motor Vehicle Safety Equipment Test Methods	10/04/94	07/28/95, 60 FR 28694.	
Section 8–8	Motor Vehicle Inspection Program	10/04/94	07/28/95, 60 FR 28694.	
Section 8–9	Motor Vehicle Inspection Fee	10/04/94	07/28/95, 60 FR 28694.	
Section 8–10	Severability	10/04/94	07/28/95, 60 FR 28694.	
Regulation No. 10	Infectious Waste Incinerators.			
Section 10–1	Definitions	10/06/94	09/06/96, 61 FR 47057.	
Section 10–2	Prohibited Act	10/06/94	09/06/96, 61 FR 47057.	
Section 10–3	Emission Standards	10/06/94	09/06/96, 61 FR 47057.	
Section 10–4	Performance Specifications	10/06/94	09/06/96, 61 FR 47057.	
Section 10–5	Monitoring Requirements	10/06/94	09/06/96, 61 FR 47057.	
Section 10–6	Compliance Schedule for Existing Infectious Waste Incinerators.	10/06/94	09/06/96, 61 FR 47057.	
Section 10–7	Testing Requirement	10/06/94	09/06/96, 61 FR 47057.	
Section 10–8	Recordkeeping and Reporting Requirements	10/06/94	09/06/96, 61 FR 47057.	
Section 10–9	Severability	10/06/94	09/06/96, 61 FR 47057.	
Regulation No. 11	Emergency Episode Regulation.			
Section 11–1	Episode Criteria	11/13/96	06/17/97, 62 FR 32688.	
Section 11–2	Emission Reductions	11/13/96	06/17/97, 62 FR 32688.	
Regulation No. 14	Regulation for Control of Nitrogen Oxides.			
Section 14–1	Definitions	08/10/93	06/29/96, 61 FR 39326.	
Section 14–2	Emission Standards	08/10/93	06/29/96, 61 FR 39326.	
Section 14–3	Procedures for Determining RACT	08/10/93	06/29/96, 61 FR 39326.	
Section 14–4	Recordkeeping and Reporting Requirements	08/10/93	06/29/96, 61 FR 39326.	
Section 14–5	Compliance Schedule	08/10/93	06/29/96, 61 FR 39326.	

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[FR Doc. 05–20005 Filed 10–5–05; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R06–OAR–2005–TX–0020; FRL–7982–2]

Approval and Promulgation of Air Quality Implementation Plans; Texas; Texas Low-Emission Diesel Fuel Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the State of Texas making changes to the Texas Low-Emission Diesel (TXLED) Fuel program. With one exception, the changes are either administrative in nature, clarify existing provisions, add more specific reporting and recordkeeping requirements, or update references. These changes meet section 110(l) of the Federal Clean Air Act (the Act) because they improve the quality of the SIP and make it more enforceable.

The more substantive change is the repeal of the state sulfur standard. This repeal being approved does not change the ultimate requirements regarding the reductions to be achieved because Texas did not rely upon the sulfur standard when EPA originally approved the program as part of the Houston ozone attainment demonstration SIP. Also, there are no sulfur dioxide (SO_2) or particulate matter (PM) nonattainment areas in the affected area and no monitored violations. As a result, in accordance with section 110(l) of the Act, this removal will not interfere with attainment of the National Ambient Air Quality Standards (NAAQS), Rate of Progress, reasonable further progress or any other applicable requirement of the Act. Under section 553(d)(1) of the Administrative Procedure Act, EPA is making this action effective upon publication because it relieves a restriction.

DATES: This rule is effective on October 6, 2005.

ADDRESSES: EPA has established a docket for this action under Regional Material in EDocket (RME) Docket ID No. R06–OAR–2005–TX–0020. All documents in the docket are listed in the Regional Material in EDocket (RME) index at *http://docket.epa.gov/rmepub/*, once in the system, select ''quick search,'' then key in the appropriate RME Docket identification number. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in RME or in hard copy at the Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. The file will be made available by appointment for public inspection in the Region 6 FOIA Review Room between the hours of 8:30 a.m. and 4:30 p.m. weekdays except for legal holidays. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below or Mr. Bill Deese at (214) 665–7253 to make an appointment. If possible, please make the appointment at least two working days in advance of your visit. There will be a 15 cent per page fee for making photocopies of documents. On the day of the visit, please check in at the EPA Region 6 reception area at 1445 Ross Avenue, Suite 700, Dallas, Texas.

The State submittal is also available for public inspection at the State Air Agency listed below during official business hours by appointment:

Texas Commission on Environmental Quailty, Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT: Sandra Rennie, Air Planning Section (6PD–L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733, telephone (214) 665–7367; fax number 214–665–7263; e-mail address *rennie.sandra@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document wherever ''we,'' ''us,'' or ''our'' is used, we mean the EPA.

Outline

I. What Action Is EPA Taking?
II. What Is the Background for This Action?
III. What Comments Were Received During the Public Comment Period, August 10, 2005, to September 9, 2005?
IV. Final Action
V. Statutory and Executive Order Reviews

I. What Action Is EPA Taking?

Today we are approving revisions to the TXLED rule submitted to EPA for approval as a SIP revision on March 23, 2005, except two portions on which we are taking no action and one portion for which we already took action on April 6, 2005. The Executive Director of the TCEQ submitted a letter to EPA on July 5, 2005, requesting that we not act on certain portions of the rule revision as it was submitted on March 23, 2005. We are approving revisions of those aspects of the rule on which the TCEQ has not requested that EPA postpone action.

II. What Is the Background for This Action?

We approved the original TXLED rule on November 14, 2001, (66 FR 57196) as part of the Houston-Galveston Attainment Demonstration SIP. On December 15, 2004, the Texas Commission on Environmental Quality (TCEQ) Commissioners proposed to revise the TXLED rule and adopted the rule changes on March 9, 2005. The TCEQ submitted the TXLED rule changes on March 23, 2005 to EPA for approval into the SIP. We approved the compliance date rule changes, 30 TAC 114. 319, of the March 23, 2005 SIP revision for TXLED on April 6, 2005 (70 FR 17321). This was done under parallel processing at the request of the State. The compliance date was changed from April 1, 2005, to a phased schedule of implementation starting October 1, 2005, until January 1, 2006. On August 10, 2005 (70 FR 46448), we proposed approval of the remaining portions of the March 23, 2005, SIP revision submittal—30 TAC 114.6 and 114.312, 114.314–114.316, 114.318, and 114.319—except Approved Test Methods in section 114.315(b) and Alternative V in section 114.315(c)(4)(C)(ii)(V). The State requested that we take no action on these two portions of the SIP revision submittal. Please see the proposal notice and its associated Technical Support Document for more information.

Changes to the rule are to definitions, low emission diesel standards, registration of producers and importers, approved test methods, monitoring, reporting and recordkeeping requirements, testing and approval requirements for alternative fuel formulation, and alternative emission reduction plans. Except the removal of the sulfur standard, the rule changes either are administrative in nature, clarify existing provisions, update existing references, add more stringent reporting and recordkeeping requirements, or improve the new diesel formulation testing requirements. These types of changes improve the existing SIP and make it more enforceable.

The sulfur standard was removed because the federal ultra-low sulfur diesel standards are now promulgated and will reduce sulfur in on-highway diesel in 2006 and in non-road equipment starting in 2007. Reducing

sulfur emissions does not directly reduce NO_X and VOC emissions that are precursors to ozone formation. Consequently, there will be no increase in ozone concentration levels in the eastern and central parts of Texas from the period of the previous state sulfur standard to the federal sulfur standard. Moreover, none of the ozone attainment demonstration SIPs relied upon the sulfur emission reductions from the TXLED program.

Reducing sulfur emissions does reduce sulfur dioxides and particulate matter emissions but there are no SO_2 and PM nonattainment areas in the eastern and central parts of Texas. There also are no monitored violations of these three standards in the affected areas and no upward trends. Moreover, there is only a three-month difference for implementation of the on-road sulfur standard. The attainment areas are in attainment of these standards before the new Federal sulfur standard dates.

III. What Comments Were Received During the Public Comment Period, August 10, 2005, to September 9, 2005?

Comments were received from Exxon-Mobil Refining and Supply Company and from Oryxe Energy International, Inc.

Exxon-Mobil commented in support of the approval of the rule. We appreciate the support.

Oryxe Energy had the following comments:

1. Testing of Alternative Diesel Fuel Formulations

1.1 Comment: Oryxe believes that the use of the most up-to-date ASTM or EPA methods is not itself sufficient to ensure the integrity of the program for the protection of the consumer and assurance of achieving clean air goals. Test protocols and laboratories used to run the tests on alternative diesel fuel formulations must be assured of the highest order in order [for the test results] to qualify for SIP credit. Alternately, the same assurance could be accomplished by EPA recognition of laboratory capabilities, or oversight by another appropriate governmental entity.

1.1 Response: We agree in principle that the use of ASTM or EPA methods does not in itself provide all assurances with regard to data produced using them. We also agree that how a laboratory operates with regard to quality assurance and quality control procedures is of critical importance in generating data that can be viewed with confidence. In the context of this rule, as part of a replicable procedure, we believe that ASTM or EPA methods are trusted methods that will, with the proper application, produce data of high quality.

1.2 Comment: The commenter recommends that testing be done in a process open to public review and comment, and includes a list of testing elements they believe are most critical to effective review and comment. These elements include engine selection, fuel selection, additive information, emission testing laboratory selection, and emission testing protocol.

1.2 Response: See our response to 4.2 that addresses public review and comment.

Regarding the list, many of the specific points listed under the general categories are already covered in 30 TAC 114.315. The only general category not included in the TXLED rule is emissions testing laboratory selection. Using guidance provided by the State, a company should use good judgement in selecting a laboratory for testing. EPA does not formally recognize, certify, or qualify laboratories. Currently EPA may recognize data produced by some laboratories with more confidence than data from others because of our past experience with those laboratories. EPA, along with Texas, is asking for quality assurance/quality control (QA/QC) plans from laboratories with which we have little experience that are planning to test under 30 TAC 114.315. Good QA/QC plans will help ensure the validity of the data and preserve the integrity of the program.

1.3 Comment: Oryxe recommended language changes to the Texas Administrative Code at 30 TAC § 114.315 in five places.

1.3 Response: We did not propose changes to the Texas rule, therefore new language changes are not the subject of this rulemaking. Oryxe should contact Texas during rule development to voice its concerns regarding regulatory language. We cannot change the content of State regulations in our approval actions.

2. Monitoring Requirements

2.1 Comment: Oryxe suggests adding language at the end of 30 TAC § 114.316(e) to ensure that the benefits from Nox reductions are verified.

2.1 Response: We cannot change the content of State regulations in our approval actions. A process for verification of fuel additive technologies exists in EPA's Environmental Technology Verification (ETV) program in cooperation with the Voluntary Diesel Retrofit Program. With these programs in place, protocols and processes already exist for verifying a product's emission reduction capabilities, and there is no need for Texas to duplicate such a program at the expense of the State and Federal government. The ETV/VDRP process is more thorough than the comparative testing proposed by the commenter. The ETV/VDRP processes provide an even greater degree of assurance to the consumer and the general public.

3. Proposed Revisions to Alternate Emission Reduction Plans

3.1 Comment: The commenter supports the revision to the Alternate Emission Reduction Plans language at 30 TAC § 114.318.

3.1 Response: We appreciate the support.

4. EPA Approval of Alternative Diesel Fuel Formulations

4.1 Comment: Oryxe raises concerns about the removal of EPA from 30 TAC § 114.312(f). They assert that this removal would have no effect on EPA's continuing oversight of the TXLED program. The commenter acknowledges that this is not an approvable provision.

4.1 Response: EPA continues to have oversight of the TXLED alternative fuel formulation testing by the addition of EPA consultation in § 114.315(c)(6). This consultation can include the review of test protocols, quality assurance/quality control plans, as well as test data. EPA has been consulting with the State, test laboratories, and vendors regarding test protocols, QA/AC plans, and test data. As the commenter notes, Texas has agreed to remove this Executive Director discretion in a future rulemaking.

4.2 Comment: Oryxe suggests that removal of EPA approval makes it absolutely essential that testing under the alternative formulations process be open and subject to public notice and comment.

4.2 Response: EPA disagrees with this comment. The approved test method laid out in 30 TAC § 114.315 is a replicable procedure that was originally approved by EPA in November 2001 and now is revised after being subject to public notice and comment by the State. We believe that a replicable procedure can be subject to public notice and comment when it is being adopted and approved. The concept is to avoid treating each alternative fuel formulation and its testing process as a separate SIP revision by establishing a generic testing protocol that is subject to notice and comment, and approving that generic protocol. The State has the regulatory process establishing the test procedure. In advance of setting a test protocol for a new product, the State will consult

with EPA in case it is evident that slight deviations from the established test methods may be warranted due to the nature of the product being tested.

IV. Final Action

EPA is granting approval of the revisions to the TXLED rule as submitted March 23, 2005, with the following exceptions: (1) The compliance date changes that were already approved on April 6, 2005; (2) revisions to Approved Test Methods in §§ 114.315(b) and 114.315(c)(4)(C)(ii)(V) that the State specifically requested we not process at this time as specified above. None of the revisions being proposed for approval change the ultimate requirements regarding the reductions to be achieved. There will be no increase in ozone concentration levels because of approving the revisions. The affected 110 counties are in attainment of the SO2 and PM standards, are not monitoring exceedances, are not experiencing any upward trends, and are in attainment before the date for the federal sulfur standard. As a result and in accordance with section 110(l) of the Act, 42 U.S.C. section 7410(l), these revisions will not interfere with attainment of the National Ambient Air Quality Standards (NAAQS), Rate of Progress, reasonable further progress, or any other applicable requirement of the Clean Air Act.

Section 553(d) of the Administrative Procedure Act generally provides that rules may not take effect earlier than 30 days after they are published in the **Federal Register**. However, section 553(d)(1) allows a rule to take effect earlier if it relieves a restriction. We are making this action effective upon publication because it relieves a restriction.

V. Statutory and Executive Order Reviews

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

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

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 5, 2005. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: September 28, 2005.

Lawrence E. Starfield,

Acting Regional Administrator, Region 6.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart SS—Texas

■ 2. The table in § 52.2270(c) entitled ''EPA Approved Regulations in the Texas SIP'' is amended by revising the entries for Sections 114.6 under Chapter 114, Subchapter A, and 114.312, 114.314, 114.315, 114.316, and 114.318 under Chapter 114, Subchapter H, Division 2, to read as follows:

§ 52.2270 Identification of plan.

* * * * *

(c) * * *

EPA APPROVED REGULATIONS IN THE TEXAS SIP

State citation	Title/subject	State approval/submittal date	EPA approval date	Explanation
* *	*	*	*	* *
Chapter 114 (Reg 4)—Control of Air Pollution from Motor Vehicles Subchapter A—Definitions				
* *	*	*	*	* *
Section 114.6	Low Emission Fuel Definitions	03/09/05	10/6/05. [Insert *FR* page number where document begins].	
* *	*	*	*	* *
Subchapter H—Low Emission Fuels				
* *	*	*	*	* *
Division 2—Low Emission Diesel				
Section 114.312	Low Emission Diesel Standards.	03/09/05	10/6/05. [Insert *FR* page number where document begins].	
* *	*	*	*	* *
Section 114.314	Registration of Diesel Producers and Importers.	03/09/05	10/6/05. [Insert *FR* page number where document begins].	
Section 114.315	Approved Test Methods	03/09/05	10/6/05. [Insert *FR* page number where document begins].	EPA took no action on Section 114.315(b) and section 114.315(c)(4) (C)(ii)(V).
Section 114.316	Monitoring, Recordkeeping, and Reporting Requirements.	03/09/05	10/6/05. [Insert *FR* page number where document begins].	
* *	*	*	*	* *
Section 114.318	Alternative Emission Reduction Plan.	03/09/05	10/6/05. [Insert *FR* page number where document begins].	
* *	*	*	*	* *

[FR Doc. 05–20108 Filed 10–5–05; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[R01–OAR–2005–MA–0002; FRL–7981–5]

Approval and Promulgation of State Plans For Designated Facilities and Pollutants: Massachusetts; Negative Declaration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving the Sections 111(d) and 129 negative declaration submitted by the Massachusetts Department of Environmental Protection (MADEP) on August 23, 2005. This negative declaration adequately certifies that there are no existing hospital/medical/infectious waste incinerators (HMIWIs) located within the boundaries of the Commonwealth of Massachusetts. EPA publishes regulations under Sections 111(d) and 129 of the Clean Air Act requiring states to submit control plans to EPA. These state control plans show how states intend to control the emissions of designated pollutants from designated facilities (*e.g.*, HMIWIs). The Commonwealth of Massachusetts submitted this negative declaration in lieu of a state control plan.

DATES: This direct final rule is effective on December 5, 2005 without further notice unless EPA receives significant adverse comment by November 7, 2005. If EPA receives adverse comment, we will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Regional Material in EDocket (RME) ID Number R01–OAR–2005–MA–0002 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://docket.epa.gov/rmepub/* Regional Material in EDocket (RME), EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Once in the system, select ''quick search,'' then key in the appropriate RME Docket identification number. Follow the on-

line instructions for submitting comments.

C. E-mail: *brown.dan@epa.gov*.

D. Fax: (617) 918–0048.

E. Mail: ''RME ID Number R01–OAR–2005–MA–0002'', Daniel Brown, Chief, Air Permits, Toxics & Indoor Programs Unit, Office of Ecosystem Protection, U.S. EPA, One Congress Street, Suite 1100 (CAP), Boston, Massachusetts 02114–2023.

F. Hand Delivery or Courier. Deliver your comments to: Daniel Brown, Chief, Air Permits, Toxics & Indoor Programs Unit, Office of Ecosystem Protection, U.S. EPA, One Congress Street, Suite 1100 (CAP), Boston, Massachusetts 02114–2023. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding federal holidays.

Instructions: Direct your comments to Regional Material in EDocket (RME) ID Number R01–OAR–2005–MA–0002. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://docket.epa.gov/rmepub/*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through Regional Material in EDocket (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 Regional Material in EDocket (RME) index at *http://docket.epa.gov/rmepub/*. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in RME or in hard copy at the Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, Suite 1100, Boston, MA. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section below to schedule your review. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: John J. Courcier, Office of Ecosystem Protection (CAP), EPA-New England, Region 1, Boston, Massachusetts 02203, telephone number (617) 918–1659, fax number (617) 918–0659, e-mail *courcier.john@epa.gov*.

SUPPLEMENTARY INFORMATION:

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I. What Action Is EPA Taking Today?

EPA is approving the negative declaration of air emissions from HMIWI units submitted by the Commonwealth of Massachusetts.

EPA is publishing this negative declaration without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve this negative declaration should relevant adverse comments be filed. If EPA receives no significant adverse comment by November 7, 2005, this action will be effective December 5, 2005.

If EPA receives significant adverse comments by the above date, we will withdraw this action before the effective date by publishing a subsequent document in the **Federal Register** that will withdraw this final action. EPA will address all public comments received in a subsequent final rule based on the parallel proposed rule published in today's **Federal Register**. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If EPA receives no comments, this action will be effective December 5, 2005.

II. What Is the Origin of the Requirements?

Under Section 111(d) of the Clean Air Act, EPA published regulations at 40 CFR Part 60, Subpart B which require states to submit plans to control emissions of designated pollutants from designated facilities. In the event that a state does not have a particular designated facility located within its boundaries, EPA requires that a negative declaration be submitted in lieu of a control plan.

III. When Did the Requirements First Become Known?

On June 20, 1996 (61 FR 31736), EPA proposed emission guidelines for HMIWI units. This action enabled EPA to list HMIWI units as designated facilities. EPA specified particulate matter, opacity, sulfur dioxide, hydrogen chloride, oxides of nitrogen, carbon monoxide, lead, cadmium, mercury, and dioxins/furans as designated pollutants by proposing emission guidelines for existing HMIWI units. These guidelines were published in final form on September 15, 1997 (62 FR 48348).

IV. When Did Massachusetts Submit Its Negative Declaration?

On August 23, 2005, the Massachusetts Department of Environmental Protection (MADEP) submitted a letter certifying that there are no existing HMIWI units subject to 40 CFR part 60, subpart B. Section 111(d) and 40 CFR 62.06 provide that when no such designated facilities exist within a state's boundaries, the affected state may submit a letter of ''negative declaration'' instead of a control plan. EPA is publishing this negative declaration at 40 CFR 62.5450.

V. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves

state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

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

In reviewing section 111(d) submissions, EPA's role is to approve state plans, 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 state plan submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a state plan submission, to use VCS in place of a state plan submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*)

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 5, 2005. Interested parties should comment in response to the proposed rule rather than petition for judicial review, unless the objection arises after the comment period allowed for in the proposal. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 62

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Reporting and record keeping requirements, Sulfur oxides, Waste treatment and disposal.

Dated: September 20, 2005.

Robert W. Varney,

Regional Administrator, EPA New England.

■ 40 CFR Part 62 is amended as follows:

PART 62—[AMENDED]

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

Authority: 42 U.S.C. 7401–7642.

Subpart W—Massachusetts

■ 2. Subpart W is amended by adding a new § 62.5450 and a new undesignated center heading to read as follows:

Air Emissions From Existing Hospital/Medical/Infectious Waste Incinerators

§ 62.5450 Identification of plan-negative declaration.

On August 23, 2005, the Massachusetts Department of Environmental Protection submitted a letter certifying that there are no existing hospital/medical/infectious waste incinerators in the state subject to the emission guidelines under part 60, subpart Ce of this chapter.

[FR Doc. 05–20106 Filed 10–5–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[OAR–2002–0042; FRL–7981–4]

RIN 2060–AJ97

Control of Emissions of Hazardous Air Pollutants From Mobile Sources: Default Baseline Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action revises the mobile source air toxics (MSAT) rule's default baseline values for reformulated gasoline and conventional gasoline to reflect the national average toxics performance of gasoline during 1998–2000. EPA's MSAT rule, Control of Emissions of Hazardous Air Pollutants From Mobile Sources (66 FR 17230, March 29, 2001), requires that the annual average toxic performance of gasoline must be at least as clean as the average performance of the gasoline produced or imported during the period 1998–2000 (known as the ''baseline period''). The baseline performance is determined separately for each refinery and importer, and the rule established default toxics baseline values for refineries and importers that could not develop individual toxics baselines. The default toxics baseline values are based on the national average performance of gasoline during the baseline period. However, at the time of the final rule, gasoline toxics performance data were not yet available for the year 2000. Therefore, the final rule included regulations directing the EPA to revise the default toxics baseline values in the rule to reflect the entire 1998–2000 baseline period once the appropriate data became available. With this action, EPA is revising the default toxics baseline values for refineries and importers to reflect the national average

toxics performance of gasoline during 1998–2000.

DATES: This final rule will be effective on November 7, 2005.

ADDRESSES: EPA has established a docket for this action under Docket ID No. OAR–2002–0042. All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket*. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Air Docket in the EPA Docket Center, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington DC. This Docket Facility and the Public Reading Room are 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 Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Christine Brunner, OTAQ, ASD Environmental Protection Agency, 2000 Traverwood, Ann Arbor, MI 48105, telephone number: (734) 214–4287; fax number: (734) 214–4816; e-mail address: *brunner.christine@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A Does This Action Apply to Me?

This action may affect you if you produce, import, distribute or sell gasoline. The following table gives some examples of entities that may have to follow the regulations.

Category	NAICS[1] codes	SIC[2] codes	Examples of potentially regulated entities
Industry	324110	2911	Petroleum Refiners.
Industry	422710 422720	5171 5172	Gasoline or Diesel Marketers and Distributors.
Industry	484220 484230	4212 4213	Gasoline or Diesel Carriers.

[1] North American Industry Classification System (NAICS).
[2] Standard Industrial Classification (SIC) system code.

This table is not intended to be exhaustive, but provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be affected by this action. Other types of entities not listed in the table could also be affected. To decide whether your organization might be affected by this action, you should carefully examine today's action and the existing regulations in 40 CFR part 80. If you have any questions regarding the applicability of this action to a particular entity, consult the persons listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

II. Background

As discussed in the proposal, the regulations promulgated in the final rule, Control of Emissions of Hazardous Air Pollutants From Mobile Sources (66 FR 17230, March 29, 2001), also known as the Mobile Source Air Toxics (MSAT) rule, require that the annual average toxics performance of gasoline produced or imported beginning in 2002 must be at least as clean as the average performance of the gasoline produced or imported during the three-year period 1998–2000 (40 CFR part 80, subpart J). Toxics performance is determined separately for reformulated gasoline (RFG) and conventional gasoline (CG).

To establish a unique individual MSAT baseline, EPA requires each refiner and importer to submit documentation (i.e., toxics performance and volume data) supporting the determination of the baseline. Those refiners and importers who did not have sufficient refinery production or imports during 1998–2000 (based on the criteria specified in § 80.855(a) and § 80.915(a)) have the default baseline provided in § 80.855(b)(1) as their individual MSAT baseline.

As discussed in the rule, the default baseline is based on the average toxics performance of gasoline produced and imported for use in the United States during the baseline period (1998–2000). At the time of the rulemaking, year 2000 batch data from refiners and importers were not available, so EPA included in the regulations an estimate of the default baseline, as well as a requirement at § 80.855(b)(2) that EPA update this estimate to reflect the gasoline produced during the entire baseline period, including the year 2000.

EPA issued a proposed a rule (70 FR 640, January 4, 2005) which would fulfill the requirement at § 80.855(b)(2) to revise the default baseline values. The deadline for requesting a public hearing was January 24, 2005, and for submitting comments, February 3, 2005. No one requested to speak at a public hearing; five comments were received. Copies of the comments on the proposal can be obtained from the docket (see **ADDRESSES**).

III. Description of Today's Action

A. Default Baseline Values

EPA is finalizing the MSAT default compliance baseline values, or ''default baseline values,'' in § 80.855(b)(1) as proposed. For RFG, the revised value is 26.78 percent reduction. For CG, the revised value is 97.38 mg/mile. The revised values include the appropriate compliance margins.

TABLE 1.—MSAT DEFAULT BASELINE VALUES

		Previous value (66 FR 17230, 3/29/01)	Today's action
RFG (% reduction)	1998–2000 Average	26.01	27.48
	Default Baseline Value ∧	26.71[1] (correct value = 25.31)	26.78
CG (mg/mile)	1998–2000 Average	92.14	94.88
	Default Baseline Value ∧	94.64	97.38

∧ Includes compliance margin of 0.7% reduction for RFG, and 2.5 mg/mile for CG, per § 80.915(h).
[1] See the discussion in section ''C. Correction''.

Today's action promulgates revised default baseline values calculated using the Batch Performance methodology. In the proposal, we presented two calculation methodologies we had evaluated for the purposes of calculating the default baseline values: the Batch Performance method and the Fuel Parameter method. Both use 1998–2000 gasoline property data submitted by refiners and importers. We proposed to use the Batch Performance method because it better reflects and accounts for the actual gasoline (based on composition) that was in the market during 1998–2000. The Batch Performance method also more closely resembles how refiners and importers determine compliance with the RFG and anti-dumping regulations, which is on a batch by batch basis, by analyzing each batch and then determining the average toxics performance of the batches. All those who commented on this aspect of the proposal supported the Batch Performance calculation methodology as more appropriate than the Fuel Parameter methodology.

All but one of the commenters supported this action to revise the default baseline values. The commenter who did not support the change claimed that the change disproportionately affects blender/refiners and importers. While more blender/refiners and importers than crude-processing refiners are subject to the default baseline, this action simply updates the default baseline values as required by the original MSAT rule and does not change (compared to the original MSAT rule) those who are subject to the default baseline.

Today's action revising the default baseline values was required under § 80.855(b)(2). Because today's action completes that requirement, the regulatory language at § 80.855(b)(2) is being removed, and that paragraph designated as ''Reserved,'' a term used to maintain the continuity of codification in the Code of Federal Regulations (CFR).[2]

B. Effective Date

The default baseline values promulgated today will be effective beginning with the 2006 annual compliance period which begins on January 1, 2006. EPA had proposed a start date of January 1, 2005. Most commenters did not support the proposed January 1, 2005, start date, though one entity mildly supported that date for the CG revised default baseline value, as that value is less stringent than the value originally promulgated. Those opposed to the 2005 start date stated that it would amount to a retroactive rulemaking (since the requirement would apply as of the January 1, 2005, compliance period but would be promulgated after that date). Most supported a January 1, 2006, start date, provided the final rule was promulgated before September 30, 2005, or more generally, a start date beginning with the next compliance period after promulgation. EPA agrees that a January 1, 2006, start date is more appropriate given the timing of the proposed and the final rules, and is promulgating that start date in today's action. We believe that this start date provides affected parties sufficient lead time to prepare for the changes required by today's action, yet does not further delay any environmental benefits associated with the baseline value revisions.

C. Correction

For the reasons set out in the preamble to the proposed rule, today's action corrects, for calendar years 2002 through 2005, the RFG default MSAT value listed in the March 29, 2001, final rule. In that action, the compliance margin was incorrectly applied to the RFG average toxics reduction estimated for the period 1998–1999. Thus, in addition to promulgating the default toxics baseline that would apply beginning in 2006, today's action also corrects the RFG default toxics baseline applicable to the compliance years 2002, 2003, 2004, and 2005, by appropriately applying the compliance margin to the RFG average toxics reduction estimated in the 2001 final rule. The resulting default RFG baseline is 25.31% reduction.

D. Environmental and Economic Impact

EPA included a discussion of the environmental and economic impacts of the MSAT rule in the March 2001 preamble to the rule. Today's action updating the default baseline values does not significantly change those environmental or economic analyses, though EPA expects that there may be minor impacts. Because the RFG default baseline value becomes slightly more stringent, there may be some cost to affected parties to comply with this revised value. With this slight increase in stringency will likely come a small increase in environmental benefits compared to the current standard. However, it is difficult to estimate the full impact (both economic and environmental) since most of those subject to the MSAT default RFG baseline do not import or produce RFG on a regular basis or do not produce significant quantities of RFG or may never produce RFG. Based on 2003 compliance reports, we estimate that about 40% of the RFG suppliers (refiners and importers) are subject to the MSAT default baseline, and none of those are considered small refiners or importers. In addition, we estimate that these entities supplied less than 10 percent of the RFG volume.

The change in the CG default baseline value may result in an increase in emissions compared to the current standard since the value becomes less stringent as a result of today's action. However, given the discrepancy in CG data quality between the data used in the baseline calculation in the 2001 MSAT rule and in this final action,[3] it is difficult to fully determine the environmental impact of this change. In addition, most of those subject to the CG default baseline are importers or blenders who do not produce or import large quantities of CG and/or who produce or import on an irregular basis. The majority of the CG volume is subject to an individual MSAT standard. Thus, for the total pool of CG, the environmental effect of this change in the default baseline is likely to be small.

E. Other Comments

Several commenters addressed issues not part of this rulemaking and therefore beyond its scope. These comments are briefly discussed in a memo to the docket.

IV. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866, (58 FR 51,735 (October 4, 1993)) the Agency must determine whether the regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

[2] Federal Register Document Drafting Handbook, 1991.

[3] As mentioned in the proposal, during the baseline approval process, many errors were found in the submitted CG data. Thus, the default baseline values in the 2001 MSAT rule were based on a flawed data set, though the best available at the time. The CG default values contained in today's rule are based on corrected batch data as well as (correct) year 2000 data.

(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.

It has been determined that this rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq* because the amendments in this rule do not change the information collection requirements of the underlying MSAT rule.

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

EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this final rule.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A petroleum refining company with fewer than 1500 employees or a petroleum wholesaler or broker with fewer than 100 employees, based on the North American Industrial Classification System (NAICS); (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's action on small entities, EPA has concluded that this action will not have a significant economic impact on a substantial number of small entities. We have determined that approximately 25 refiners and importers meet the NAICS criteria described above and are subject to the MSAT default baseline for their reformulated gasoline. None of these entities produced or imported RFG during the MSAT baseline period or since then. Based on our knowledge of these refiners and importers, in fact, we would not expect any of them to produce or import RFG in the near future. Thus, we do not expect the revised RFG MSAT default value to adversely impact these small entities compared to the current RFG MSAT default value. In the event these refiners and importers choose to produce or import RFG, they will have had sufficient notice of the standard. Additionally, because the toxics determination is a function of many fuel parameters, as well as the volumes of the batches, the slight increase in stringency of the RFG MSAT default value should not pose a significant burden toward achieving compliance.

Although this final rule will not have a significant economic impact on a substantial number of small entities, the impact of this rule would be reduced for small entities by various provisions in the MSAT rule. The MSAT rule contains deficit and credit carryforward provisions which provide compliance flexibility to regulated entities. Under these provisions, refiners and importers are allowed to carry a toxics deficit (indicating noncompliance with their MSAT standard) forward for one year, using credits generated in the prior or post years to make up the deficit. The underlying rule also includes a compliance margin to account for ordinary variations in fuel quality. Because RFG toxics performance is a function of many fuel parameters, as well as the volumes of the batches, the slight increase (about 6%) in the stringency of the RFG MSAT default value should not pose a significant burden toward achieving compliance. Beginning in 2006, the requirement that a refiner's or importer's average gasoline sulfur level not exceed 30 ppm should provide additional assistance to regulated entities in complying with the MSAT requirements, since sulfur reductions also decrease toxics emissions, as determined by the Complex Model.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), P.L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector. EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Today's action simply modifies the original rule in a limited manner, and would not significantly change the original rule. Thus, today's final rule is not subject to the requirements of sections 202 and 205 of the UMRA.

EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments, because it applies only to parties which produce or import gasoline.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The rule amends existing regulatory provisions applicable only to producers and importers of gasoline and does not alter State authority to regulate these entities. The amendments will impose no direct costs on State or local governments. Thus, Executive Order 13132 does not apply to this rule.

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 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'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.''

This final rule does not have tribal implications, as specified in Executive Order 13175. 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. The rule amends existing regulatory provisions applicable only to producers and importers of gasoline and will impose no direct costs on tribal governments. Thus, Executive Order 13175 does not apply to this rule.

G. Executive Order 13045: Protection of Children From Environmental Health & Safety Risks

Executive Order 13045: ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This final rule is not subject to Executive Order 13045 because it is not an economically significant regulatory action as defined in Executive Order 12866 and it is based on technology performance and not on health or safety risks.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

As noted in the proposed rule, Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law No. 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, 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 voluntary consensus standards.

This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A Major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This final rule will be effective on November 7, 2005.

Statutory Provisions and Legal Authority

The statutory authority for the fuels controls in today's final rule can be found in sections 202 and 211(c) of the Clean Air Act (CAA), as amended. Support for any procedural and enforcement-related aspects of the fuel controls in today's rule, including recordkeeping requirements, comes from sections 114(a) and 301(a) of the CAA.

List of Subjects in 40 CFR Part 80

Administrative practice and procedure, Air pollution control, Confidential business information, Environmental protection, Gasoline, Labeling, Motor vehicle fuel, Motor vehicle pollution, Penalties, Reporting and recordkeeping requirements.

Dated: September 30, 2005.

Stephen L. Johnson,

Administrator.

■ For the reasons set forth in the preamble, 40 CFR part 80 is amended as set forth below:

PART 80—REGULATION OF FUELS AND FUEL ADDITIVES

■ 1. The authority citation for part 80 continues to read as follows:

Authority: 42 U.S.C. 7414, 7545, and 7601(a).

■ 2. Section 80.855 is amended by removing and reserving paragraph (b)(2) and revising paragraphs (b)(1)(i) and (b)(1)(ii) to read as follows:

§ 80.855 What is the compliance baseline for refineries or importers with insufficient data?

* * * * *

(b)(1) * * *

(i) For conventional gasoline, prior to January 1, 2006, 94.64 mg/mile; starting January 1, 2006, 97.38 mg/mile.

(ii) For reformulated gasoline, prior to January 1, 2006, 25.31 percent reduction from statutory baseline; starting January 1, 2006, 26.78 percent reduction from statutory baseline.

(2) [Reserved]

* * * * *

[FR Doc. 05–20109 Filed 10–5–05; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AJ13

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for the Salt Creek Tiger Beetle (*Cicindela nevadica lincolniana*)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), determine endangered status for the Salt Creek tiger beetle (*Cicindela nevadica lincolniana*), pursuant to the Endangered Species Act (Act) of 1973, as amended (Act). This species is endemic to the saline wetlands of eastern Nebraska (NE) and associated streams in the northern third of Lancaster County and southern margin of Saunders County. Only three small populations of this subspecies remain, and the known adult population size in 2005 was only 153 individuals. This final rule extends Federal protection and recovery provisions of the Act to the Salt Creek tiger beetle.

DATES: This final rule is effective November 7, 2005.

ADDRESSES: The complete file for this final rule is available for inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Nebraska Ecological Services Field Office, 203 West Second Street, Federal Building, Second Floor, Grand Island, NE 68801.

FOR FURTHER INFORMATION CONTACT: Mr. Steve Anschutz, Field Supervisor, at the above address (telephone (308) 382–6468, extension 12; facsimile (308) 384–8835)).

SUPPLEMENTARY INFORMATION:

Background

Please see the proposed rule to list the Salt Creek tiger beetle as endangered (February 1, 2005; 70 FR 5101) for detailed information on the subspecies' taxonomy, natural history, distribution, and population status. We include a brief synopsis of that information here, along with new information that has been obtained since publication of the proposed rule.

The Salt Creek tiger beetle (*Cicindela nevadica lincolniana*) is an active, ground-dwelling, predatory insect that captures small arthropods in a ''tiger-like'' manner by grasping prey with its mandibles (mouthparts). Salt Creek tiger beetle larvae live in permanent burrows in the ground. They are voracious predators, fastening themselves by means of abdominal hooks to the tops of their burrows and rapidly extending outward to seize passing prey. Adult Salt Creek tiger beetle are metallic brown to dark olive-green above, with a metallic dark green underside, and measure 1.3 centimeters (cm) (0.5 inch (in.)) in total length.

Taxonomy

The Salt Creek tiger beetle is a member of the family Cicindelidae, genus *Cicindela*. Eighty-five species and more than 200 subspecies of tiger beetles in the genus *Cicindela* are known from the United States (Boyd *et al.* 1982, Freitag 1999). Originally, the Salt Creek tiger beetle was described by Casey (1916) as a separate species, *C. lincolniana*. Willis (1967) identified *C. n. lincolniana* as a subspecies of *C. nevadica*, which evolved from *C. n. knausii*. This is the currently accepted taxonomic classification. The evolution of *C. n. lincolniana* was a result of its isolation some time after the Kansan glaciation (435,000 to 300,000 years before the present), but possibly during the Yarmouth glaciation (300,000 to 265,000 years before the present). Busby (2003) recently examined populations of *C. nevadica* and confirmed that *C. n. lincolniana* is distinctive from other populations of *C. nevadica* in the central Great Plains.

Life History

Allgeier *et al.* (2004) and Spomer *et al.* (2004a) indicated that the Salt Creek tiger beetle has a 2-year life cycle, not uncommon for tiger beetles. Spomer and Higley (2001) and Spomer *et al.* (2004a) described the life cycle of the Salt Creek tiger beetle in detail through egg, larval, and adult stages. Adults are first observed as early as the end of May or as late as mid-June, peak in late June or early July, and disappear by mid-to late July. By August, almost all adults have died in the field (Spomer *et al.* 2004a). Females lay their eggs along sloping banks of creeks in areas where the salt layer is exposed in the soil horizon, in barren salt flats of saline wetlands, or along saline stream edges that are found in close association with water, near a seep or stream. During the night, female Salt Creek tiger beetles lay about 50 eggs in burrows (Farrar 2003, Allgeier *et al.* 2004). After the egg hatches and the young larva emerges from the burrow, the larva digs a burrow and uses its head to scoop out soil. Larval burrows can occur throughout a saline streambank and on barren salt flats of saline wetlands. Based on field observations, numerous saline seeps cause variation in soil moisture and salinity in the streambanks that allow burrows to occur away from the water's edge (W. Allgeier, pers. comm. 2005).

The small larva waits at the top of its burrow and ambushes prey that passes near the burrow entrance. The larva will plug its burrow and retreat inside during periods of high water, very hot weather, or very dry conditions. As the larva grows, it molts to a larger instar (a life stage between molts), enlarging and lengthening its burrow. For the most part, a Salt Creek tiger beetle larva will remain active until cold weather, at which time it plugs its burrow and hibernates. The Salt Creek tiger beetle has three instars. It probably overwinters as a third instar, pupates in May, and emerges as an adult. Before pupation, the larva seals its burrow entrance and digs a side chamber about 5 to 8 cm (2 to 3 in.) below the soil surface. After the adult emerges from the pupa, it remains in the chamber until its cuticle hardens.

Habitat

Tiger beetle species occur in many different habitats, including riparian habitats, beaches, dunes, woodlands, grasslands, and other open areas (Pearson 1988; Knisley and Hill 1992). Individual tiger beetle species are generally highly habitat-specific because

of oviposition (*i.e.*, the act of laying eggs) and larval sensitivity to soil moisture, composition, and temperature (Pearson 1988, Pearson and Cassola 1992). A common component of tiger beetle habitat appears to be open sunny areas for hunting and thermoregulation (an adaptive behavior to use sunlight or shade to regulate body temperature) (Knisley *et al.* 1990, Knisley and Hill 1992).

The Salt Creek tiger beetle occurs in saline wetlands—on exposed saline mudflats and along mud banks of streams and seeps that contain salt deposits (Carter 1989, Spomer and Higley 1993, LaGrange 1997). These saline habitats occur within the floodplain of Salt Creek and its tributaries in northern Lancaster and southern Saunders Counties. The habitats, especially the saline wetlands, receive their salinity from groundwater passing through an underground rock formation containing salts deposited by an ancient sea that once covered Nebraska (LaGrange 1997). Saline wetlands of eastern Nebraska are characterized by saline soils and halophytes (plants adapted to saline conditions). They usually contain a central area that is devoid of vegetation and, when dry, exhibit salt-encrusted mudflats (barren salt flats) (LaGrange 1997). These saline wetlands are used by Salt Creek tiger beetles and numerous other saline-adapted insects.

The Salt Creek tiger beetle has very narrow habitat requirements for breeding; they occur in saline wetlands, on exposed saline mud flats and gravel bars, or along mud banks of streams and seeps that contain salt deposits and are sparsely vegetated (Carter 1989; Spomer and Higley 1993; LaGrange 1997; Nebraska Game and Parks Commission (NGPC) 1999; Spomer *et al.* 2004a). Larvae have been found only on the moist salt-encrusted banks of Little Salt Creek in northern Lancaster County (Spomer *et al.* 2004a). The density of larval burrows decreases as vegetative cover increases (S. Spomer, University of Nebraska—Lincoln (UNL), pers. comm. 2002). Spomer *et al.* (2004a) indicated that adults show little flexibility in their selection of breeding habitat.

The earliest emerging adults sometimes move from creek banks to the salt flats, presumably for early prey. However, a week or two into emergence, this behavior stops and adults are found almost exclusively in wetter areas, like creek edges or seeps along the creek (Spomer *et al.* 2004a). During peak emergence, adults often wander from their emergence sites, presumably looking for new areas to colonize or search for prey (Spomer *et al.* 2004a). It is during this time that adults often appear on sand or gravel bars, or on less saline soils along the stream. Salt Creek tiger beetles require these open barren areas to construct larval burrows, thermoregulate, and forage, and for use as dispersal corridors (Spomer and Higley 1993; L. Higley, UNL, pers. comm. 2002; S. Spomer, UNL, pers. comm. 2002). The Salt Creek tiger beetle is adapted to brief periods of high-water inundation and highly saline conditions (Spomer and Higley 1993).

Distribution and Status Overview

The Salt Creek tiger beetle currently has one of the most restricted ranges of any insect in the United States (Spomer and Higley 1993, Spomer *et al.* 2004a); it only occurs along limited segments of Little Salt Creek and adjacent remnant salt marshes in Lancaster County, Nebraska. To assess the historical and current distributions and populations of Salt Creek tiger beetle, we have analyzed private and public insect collections, NGPC's Heritage database records, and surveys conducted over the past 15 years, as well as sought the professional opinions of UNL entomologists who have studied or are studying the Salt Creek tiger beetle. Please see the proposed rule (70 FR 5101; February 1, 2005) for additional details about the historical records we consulted, and the historical distribution of the subspecies.

Recent Distribution and Abundance

Pearson and Cassola (1992) found that tiger beetle population size can be accurately estimated through visual counting due to the relative ease of observing and counting individuals, and because of their specialized habitat requirements. Visual counts have limitations (Horn 1976), but if they are conducted in a similar manner every year, they can provide relative population estimates and a good estimate of the health and stability of the populations surveyed (Allgeier *et al.* 2003). Intensive visual surveys conducted from 1991 through 2005 found Salt Creek tiger beetles at a total of 13 sites; although beetles were not found, nor were surveys conducted, at all 13 sites in all 15 years (Spomer *et al.* 2002, 2004a, 2004b; S. Spomer, UNL, pers. comm. 2005). Please see the proposed rule (70 FR 5101) for a description of the visual survey techniques used. In addition to visual count surveys, in 2002, researchers undertook a mark/recapture study of the Little Salt Creek—Arbor Lake population. The small sample size hampered the mark/recapture study, thereby making conclusions about population size uncertain. This study has not been continued in subsequent years due to limited resources. Results obtained from this study in 2002 are discussed in the proposed rule (70 FR 5101).

Surveys conducted over a 15-year period establish that the Salt Creek tiger beetle is an extremely rare insect, numbering only in the hundreds and confined to an extremely small range. Visual surveys conducted from 1991 to 2005 show substantial annual fluctuations of total adult tiger beetles with 229, 150, 115, 473, 637, 631, 550, 308, 271, 309, 519, 777, 745, 558, and 153 found each year, respectively, although not all sites were surveyed in all years (Spomer and Higley 1993; Spomer *et al.* 1997, 1999, 2001, 2002, 2004a, 2004b; Allgeier *et al.* 2003, S. Spomer, UNL, pers. comm. 2005). The 2005 surveys found only 153 Salt Creek tiger beetles. This ranks as the third lowest count since 1991 and the lowest in the past 12 years. Over the last two years, the total number of Salt Creek tiger beetles observed through visual surveys has declined by about 80 percent (from 745 individuals in 2003 to 153 individuals in 2005).

We determined that some of the 13 ''sites'' could be combined into ''populations'' of Salt Creek tiger beetles when the following criteria were met—(1) close proximity of sites to each other (*i.e.*, nearby, contiguous, or neighboring); (2) distances less than 805 meters (m) (2,640 feet (ft)) between sites; and (3) the presence of both suitable saline wetland (*i.e.*, barren salt flats) and stream (saline edges) habitats that form a saline wetland/stream complex. The distance in criteria 2 above (805 m (2,640 ft)) is based on the 2002 mark/recapture study by Allgeier *et al.* (2003), which established that Salt Creek tiger beetles can move among nearby suitable habitats, as well as the distance at which Salt Creek tiger beetles may be attracted to artificial sources of light.

On the basis of the above criteria, our evaluation of the 13 survey sites resulted in the delineation of 6 different populations of Salt Creek tiger beetles, half of which have been extirpated since annual surveys began in 1991 (a population is considered extirpated after 2 consecutive years of negative survey results). The six Salt Creek tiger beetle populations, including the three that have been extirpated, are described below in order of abundance based on visual surveys conducted from 1991 to 2005—(1) Little Salt Creek—Arbor Lake; (2) Little Salt Creek—Roper; (3) Upper Little Salt Creek—North; (4) Upper Little Salt Creek—South; (5) Jack Sinn

Wildlife Management Area (WMA); and (6) Capitol Beach.

The last 3 populations on the above list are considered to be extirpated. The Upper Little Salt Creek—South population was located approximately 5 km (3 mi) upstream from the Little Salt Creek—Arbor Lake population. Degraded and nonfunctioning saline wetlands exist adjacent to Little Salt Creek, and although once devoid of vegetation, saline stream edge habitats are now vegetated at this site. The Upper Little Salt Creek—South population is considered extirpated because no Salt Creek tiger beetles have been found there since 1995. The Jack Sinn WMA population was made up of one survey site located on Rock Creek in southern Saunders and northern Lancaster Counties, approximately 20 km (10 mi) northeast of the Little Salt Creek—Arbor Lake population. Salt Creek tiger beetles from sites comprising the Jack Sinn WMA population have not been found since 1998 (Spomer *et al.* 1999, 2001, 2002, 2004a, 2004b; Allgeier *et al.* 2003, S. Spomer, UNL, pers. comm. 2005). This population is considered extirpated because no Salt Creek tiger beetles have been found there since 1998. Capitol Beach was once one of the largest saline wetland tracts in eastern Nebraska, with a size of approximately 150 ha (400 ac) (Cunningham 1985). Museum records between 1900 and 1972 indicate large numbers of Salt Creek tiger beetles at this site historically. In 1984, researchers conducted visual searches for the Salt Creek tiger beetle at Capitol Beach and other sites that appeared to provide suitable habitat (Spomer and Higley 2001). They found a low number of adults at Capitol Beach and noted that the habitat had been degraded (Spomer and Higley 1993). Today, all that remains of suitable habitat at Capitol Beach is a 10– to 20–m (40– to 50-ft) wide ditch that parallels Interstate 80 for approximately 0.8 km (0.5 mi), located southwest of the Interstate 80 and Airport Interchange. No individuals have been found at Capitol Beach since 1998 (Spomer *et al.* 2002, 2004a, 2004b; Allgeier *et al.* 2003; S. Spomer, UNL, pers. comm. 2005), leading us to conclude that this population is now extirpated. Please see the proposed rule (70 FR 5101) for additional information on these 3 populations.

We briefly describe the remaining 3 extant populations, with emphasis on new information. Please see the proposed rule (70 FR 5101) for additional details on these 6 populations.

Little Salt Creek—Arbor Lake Population

The Little Salt Creek—Arbor Lake area is a large, relatively intact saline wetland complex that contains the largest population of Salt Creek tiger beetles. The Little Salt Creek—Arbor Lake population is located approximately 1.6 km (1 mi) north of the Interstate 80 and North 27th Street Interchange on the northern city limits of Lincoln, NE. It exists along the saline stream edge of Little Salt Creek and on the barren salt flats of an adjacent saline wetland. This population was monitored from 1991 to 2005, and the adult population averaged 315 individuals per year over that 15-year period (Spomer and Higley 1993; Spomer *et al.* 1997, 1999, 2001, 2002, 2004a, 2004b; Allgeier *et al.* 2003; S. Spomer, UNL, pers. comm. 2005). The 2005 survey results were the third lowest count since 1991 and the lowest in the past 12 years. Over the last two years, visual surveys of Salt Creek tiger beetles in the Little Salt Creek—Arbor Lake population declined by about 80 percent.

Little Salt Creek—Roper Population

The Little Salt Creek—Roper population is the second largest remaining population of Salt Creek tiger beetles, based on visual surveys conducted from 1994 to 2005. This population is located immediately south of the Interstate 80 and North 27th Street Interchange, approximately 1.6 km (1 mi) downstream of the Little Salt Creek—Arbor Lake population. Similar to the Little Salt Creek—Arbor Lake population, this population is associated with a saline wetland and stream complex located along Little Salt Creek. Visual surveys were conducted from 1994 to 2005, and the population counts were 54, 161, 151, 144, 45, 55, 80, 85, 258, 162, 154, and 22 respectively (Spomer *et al.* 1997, 1999, 2001, 2002, 2004a, 2004b; Allgeier *et al.* 2003, S. Spomer, UNL, pers. comm. 2005). The 2005 survey results were the lowest count since monitoring began. Over the last two years, visual surveys of Salt Creek tiger beetles in the Little Salt Creek—Roper population declined by about 86 percent.

Upper Little Salt Creek—North Population

The Upper Little Salt Creek—North population is the third and last extant (*i.e.*, existing) population of Salt Creek tiger beetles. This population is located approximately 7.2 km (4.5 mi) upstream from the Little Salt Creek—Arbor Lake population, and exists only on the saline stream edges of Little Salt Creek. Although former saline wetlands (*i.e.*, barren salt flats) exist adjacent to this population, these wetlands are degraded (drained because of the incisement of Little Salt Creek) and no longer provide suitable habitat for the Salt Creek tiger beetle. This population encompasses four sites along Little Salt Creek that were surveyed at various times during the period 1991 to 2005. Over the course of the 15-year survey period, 2 of the survey sites that comprise this population were surveyed at least 10 times. From 1991 to 1996, the number of adult beetles found in the Upper Little Salt Creek—North population averaged 32 individuals per year (Spomer and Higley 1993; Spomer *et al.* 1997). Since then, the number of adult beetles surveyed in the population has averaged about 6 individuals per year; the total number found in 2005 was 16 adult individuals (Spomer and Higley 1993; Spomer *et al.* 1997, 1999, 2001, 2002, 2004a, 2004b; Allgeier *et al.* 2003; S. Spomer, UNL, pers. comm. 2005). Higley and Spomer (pers. comm. 2002) presumed that this population was threatened with extirpation in the near future because of the low and decreasing number of adults found during surveys.

Conclusion of Salt Creek Tiger Beetle Population Review

The Salt Creek tiger beetle, highly specialized in habitat use, has probably always had a localized distribution. Visual surveys and mark-recapture results indicate that the number of Salt Creek tiger beetles is extremely small, even when compared to other federally listed tiger beetle taxa. Population numbers are even smaller than the federally listed threatened Northeastern beach tiger beetle (*Cicindela dorsalis dorsalis*) and Puritan tiger beetle (*C. puritana*). From 1989 to 1992, the number of Northeastern beach tiger beetles found during annual surveys at 65 sites in Maryland and Virginia ranged from 9,846 to more than 17,480 beetles (USFWS 1994). Surveys of Puritan tiger beetles in Maryland in 1989, 1991, 1992, and 1993 found an average of 6,389 beetles at 15 sites annually (USFWS 1993). Both the Northeastern beach tiger beetle and Puritan tiger beetle are well-studied insects and were listed as threatened under the Act in 1989 (55 FR 32088).

Museum collections and surveys conducted from 1991 through 2005 show that the number of known populations has declined from 6 to 3 in the last 9 years. Salt Creek tiger beetles were last found in the Upper Little Salt Creek—South population in 1995, and

no individuals have been found in either the Jack Sinn WMA or the Capitol Beach populations since 1998. Based on our analysis of the best available scientific information, including private and public insect collections, NGPC's Heritage database records, surveys conducted over the past 15 years, and professional opinions of UNL entomologists who have studied or are studying the Salt Creek tiger beetle, we conclude that the number of Salt Creek tiger beetle populations is declining and that the three remaining populations are immediately threatened with extinction. This is discussed further below in the Summary of Factors Affecting the Species section of this rule.

Previous Federal Action

For more information on previous Federal actions concerning the Salt Creek tiger beetle prior to 2002, please refer to the proposed rule to list the subspecies as endangered (70 FR 5101; February 1, 2005). On October 7, 2002, as part of an agreement regarding other species, the U.S. Department of the Interior reached an out-of-court settlement with several conservation organizations and agreed to make a final determination for listing the Salt Creek tiger beetle by no later than September 30, 2005. In the May 4, 2004, Candidate Notice of Review published in the **Federal Register** (69 FR 24876), the Salt Creek tiger beetle remained as a priority 3 candidate for Federal listing. On February 1, 2005, we published a proposed rule in the **Federal Register** (70 FR 5101) to list the Salt Creek tiger beetle as endangered. This final rule complies with the court order. We have updated the proposed rule to reflect new information concerning changes in distribution, status, and threats to the subspecies since publication of the proposed rule.

Summary of Comments and Recommendations

In the proposed rule published on February 1, 2005, we requested interested parties to submit factual reports or information that might contribute to the development of a final rule. A 60-day comment period closed on April 4, 2005. We contacted appropriate Federal agencies, State agencies, county and city governments, scientists, and other interested parties to request information and comments. A newspaper notice was printed in the *Lincoln Journal Star* on February 20, 2005. There were no requests for a public hearing during the comment period. Finally, we requested peer review in compliance with our peer review policy (59 FR 34270; July 1, 1994).

During the public comment period, we received written comments (i.e., letters, facsimiles, and electronic messages) from 64 individuals, businesses, schools, organizations, and State and local government entities; and 1 request for an extension of the comment period. In all, 56 commenters supported the protection of the Salt Creek tiger beetle through a Federal listing, while 8 commenters opposed the listing. Of the 56 commenters supporting the listing, 3 letters were signed by 32 organizations and individuals. We treated these as 3 individual comments of support. Issues and concerns raised by the commenters, and our responses to each are summarized below:

Issue 1: Some commenters believed that, due to the few remaining populations of Salt Creek tiger beetles and the extensive habitat loss, immediate protection under the Act is necessary. In addition, a number of commenters expressed the need for the Service to also designate critical habitat.

Our Response: We determined that emergency listing was not necessary for this subspecies. However, we believe listing is warranted. Additionally, we have pursued numerous steps to protect the beetle prior to listing. These actions are discussed below. Regarding the designation of critical habitat for the Salt Creek tiger beetle, we believe critical habitat is both prudent and determinable. However, because of the critically imperiled status of Salt Creek tiger beetle, limited financial and personnel resources available to work on this taxon, and the Service's belief that listing confers greater protection on a species than does critical habitat, we have assigned a higher priority to promptly publishing the final rule for Salt Creek tiger beetle than to proposing and designating critical habitat, as allowed pursuant to section 4(b)(6)(C)(i). Funds have been budgeted for identification of critical habitat and work on a proposed designation is underway. We plan to publish a proposed rule to designate critical habitat for Salt Creek tiger beetle in the near future.

Issue 2: One commenter provided a photograph of a tiger beetle along the Missouri River at Ponca State Park in Dixon County, Nebraska, and asserted that ''Salt Creek tiger beetles'' were common in the area.

Our Response: A tiger beetle expert at the University of Nebraska-Lincoln identified the tiger beetle in the photograph as *Cicindela formosa*, which is not the Salt Creek tiger beetle.

Issue 3: Several commenters feared the potential effects that listing the Salt Creek tiger beetle could have on their use of private lands.

Our Response: On non-Federal property, if Salt Creek tiger beetles are not present and activities on the property do not result in take, the Act's section 9 prohibitions on take would not come into play. If Salt Creek tiger beetles are present on non-Federal property, but activities on the property would not result in take, section 9 prohibitions also would not come into play. If Salt Creek tiger beetles are present on non-Federal properties and activities on the property are likely to result in take, an incidental take permit may be available under section 10(a)(1)(B). As noted elsewhere in this rule, critical habitat has not been designated for this species. Once designated, additional regulations will regulate adverse modification of occupied and unoccupied critical habitat. The Service will provide technical assistance to landowner(s) and operator(s) to help them avoid, minimize, or mitigate any adverse impacts to the Salt Creek tiger beetle and its habitat.

Proposed activities authorized, funded, or carried out by a Federal agency are subject to the consultation requirements prescribed in section 7 of the Act. Circumstances under which a proposed Federal action or Federal nexus may affect the Salt Creek tiger beetle will be handled through consultation with the involved Federal agency and applicant(s), as necessary, on a case-by-case basis, in accordance with section 7 of the Act.

Issue 4: Concerns were raised that listing the Salt Creek tiger beetle under the Act would have adverse economic and social effects on the City of Lincoln and Lancaster County by limiting residential, commercial, and industrial developments and agricultural use of lands. These commenters requested that the Service consider and analyze the possible socioeconomic impacts of the listing action.

Our Response: Under section 4(b)(1)(A) of the Act, we must base a listing decision solely on the basis of the best scientific and commercial data available. The legislative history of this provision clearly states the intent of Congress to ''ensure'' that listing decisions are ''based solely on biological criteria and to prevent non-biological criteria from effecting such decisions'' (H. Rept. 97–835). The Conference Report on the 1982 amendments to the ESA notes that economic considerations have no relevance to determinations regarding the status of species.

Economic considerations will be taken into full account when designating critical habitat, as required by the Act.

Issue 5: A few commenters noted that the Salt Creek tiger beetle is insignificant to mankind and that insects should not be protected under the Act.

Our Response: The Act recognizes the importance of all species to properly functioning ecosystems and requires us to protect species in danger of extinction and the ecosystems on which they depend. Section 3(8) of the Act defines ''the term 'fish or wildlife' (as) * * * any member of the animal kingdom, including without limitation any mammal, fish, bird (including any migratory, nonmigratory, or endangered bird for which protection is also afforded by treaty or other international agreement), amphibian, reptile, mollusk, crustacean, arthropod or other invertebrate, and includes any part, product, egg, or offspring thereof, or the dead body or parts thereof.'' Based on the best available scientific information, we have determined that the Salt Creek tiger beetle is in danger of extinction and warrants protection as an endangered species.

Issue 6: One commenter referenced ''Tiger Beetles: The Evolution, Ecology, and Diversity of Cicindelas'' (Pearson and Vogler 2001) and concluded that: (1) There is nothing unique about the Salt Creek tiger beetle, including its biology; (2) there are many other species of tiger beetles; and (3) other tiger beetle species have gone extinct without any human-related causes.

Our Response: (1) As noted above, Busby (2003) examined populations of *Cicindela nevadica* in the central Great Plains and confirmed that *C. n. lincolniana* is distinctive from other populations of *C. nevadica* in the central Great Plains. (2) We do not dispute this claim. As noted above, 85 species and more than 200 subspecies of tiger beetles in the genus *Cicindela* are known from the United States (Boyd *et al.* 1982; Freitag 1999). (3) The Service does not dispute the assertion that other species of tiger beetles have gone extinct without human related causes. However, the Act requires the Service to take action to conserve endangered and threatened species, and the ecosystems on which they depend, regardless of the cause. The Salt Creek tiger beetle faces an imminent risk of extinction.

Coincidentally, Dr. David L. Pearson, co-author of ''Tiger Beetles,'' was asked to provide a peer review of the proposed rule. In his review, he stated, ''The present proposal for the Salt Creek tiger beetle is by far the most detailed study of potentially threatened or endangered tiger beetles I have seen. The population levels, local extinction, and robust data on surviving remnant colonies are scientifically sound and reliable. There is little doubt in my mind reading this document that the Salt Creek tiger beetle will most likely go extinct in a relatively short time if no action is taken.''

Issue 7: Several commenters dispute the Service's claim that cattle grazing is a threat to the Salt Creek tiger beetle and its habitat.

Our Response: Landowners who employ sound grazing management practices, including watering sources, generally do not adversely impact Salt Creek tiger beetles. However, uncontrolled congregation of cattle in areas where Salt Creek tiger beetle larvae exist can result in the trampling of both larvae and their burrows. In addition, areas that are overgrazed are susceptible to both rain and wind erosion, which can result in sediment covering Salt Creek tiger beetle burrows. Further, erosion of sediment into Salt Creek tiger beetle habitat from overgrazed areas can change the topographic elevation of the habitat and render it unsuitable.

Issue 8: One commenter objected to the use of the term ''applied annually'' in the pesticides portion of Factor E in the Summary of Factors Affecting the Species section below.

Our Response: We have modified the sentence and eliminated the word ''annually.''

Issue 9: Several commenters expressed their view that agriculture is more environmentally friendly today than it traditionally was in the past. Some stated that they rarely use pesticides, especially insecticides. They also mentioned the use of crop rotation between soybeans, grain sorghum, and corn to help manage pest problems on a yearly basis. Additionally, they referred to the current existence of buffer strips along Little Salt Creek that serve to ''handle'' any contamination problems. Another commenter stated that agriculture and croplands in the watershed have little effect on Salt Creek tiger beetle survival since ''insecticide use is very limited and controlled and water conservation structures continue to be installed.''

Our Response: We are pleased to hear about instances where farmers minimize the use of pesticides. However, this does not fully address our concern with pesticides, especially insecticides, and their potential impacts to Salt Creek tiger beetles. As long as there are registered pesticides licensed for use on field crops (including soybeans, grain sorghum, and corn), there will be a potential for pesticide use in areas where Salt Creek tiger beetles are found. Pesticides also are used for purposes other than controlling pests in field crops. A primary example is mosquito control, particularly due to the presence of West Nile Virus in Nebraska. Buffer strips and other water control structures provide some level of protection from this factor. Farmers who do not utilize pesticides, or who use ground applicators and buffer strips, or other considerations for the Salt Creek tiger beetle, are not likely to ''take'' tiger beetles, and so are not likely to be impacted by the listing.

Issue 10: One commenter referred to a water study that the Nebraska Department of Environmental Quality (NDEQ) conducted in Little Salt Creek from 1977 to 1994. The commenter stated that ''the study confirmed that no pesticides of concern were found that would [a]ffect the Salt Creek tiger beetle according to John Bender of NDEQ.''

Our Response: The NDEQ study consisted of one sediment sample and one water sample, taken at one location and analyzed for a limited number of insecticides. More information regarding the Service's concerns with insecticides (including, but not limited, to those associated with agriculture) is provided in response to Issue 8 above and in the pesticides portion of Factor E in the Summary of Factors Affecting the Species section below.

Issue 11: One commenter stated that there are beetles in Africa that feed upon corn stocks. This commenter implied that the Salt Creek tiger beetle also could become a pest if allowed to increase its numbers.

Our Response: While some species of beetles are known to be agricultural pests, no evidence exists to indicate that tiger beetles and specifically, Salt Creek tiger beetles, are agricultural pests. As mentioned above in the Background section, the Salt Creek tiger beetle is a predatory insect that captures small arthropods. They are not known to eat corn stocks or other vegetation.

Issue 12: One commenter indicated that the Salt Creek tiger beetle is in danger of extinction because of the natural changes to the habitat in Little Salt Creek as opposed to human-induced changes.

Our Response: The human-induced impacts that have caused the loss and degradation of the Salt Creek tiger beetle's habitat in the Salt Creek watershed are documented under Factor A in the Summary of Factors Affecting the Species section below.

Issue 13: It was suggested that: (1) Our references cited should be listed in the proposed rule; and (2) that a number of the references cited in the proposed rule

had not been peer reviewed and should have been prior to being used in the proposed rule.

Our Response: (1) As noted in the proposed rule, a complete list of references cited is available upon request. Accordingly, we provided the commenter with a compact disk that contained the list of references cited as well as copies of all documents on the list. (2) The Act requires us to make listing determinations on the basis of the best scientific and commercial data available. Peer review is a consideration in determining what constitutes the best data available, but not the sole consideration. However, the Service is committed to ensuring reliance upon accurate, reliable, and unbiased information. To the greatest extent practicable and appropriate, information that we rely upon is internally reviewed for quality, including objectivity, utility and integrity. Additionally, in accordance with our July 1, 1994, Interagency Cooperative Policy for Peer Review in Endangered Species Act Activities (59 FR 34270), we solicited peer reviews from seven experts in the field of entomology who have extensive experience with tiger beetles, to help ensure that our listing decision was based on scientifically sound data, assumptions, and analyses. Five of these experts provided peer reviews. The results of the peer review are discussed below in the Peer Review section of this rule.

Issue 14: It was suggested that historical data are lacking and that recent counts are suspect.

Our Response: We have no reason to believe that the information we have used to make our determination is suspect. The commenter did not provide specific examples supporting shortcomings in historic records or current sampling methods. Peer reviews of this rule support our conclusion that based on best scientific and commercial data available, the Salt Creek tiger beetle faces imminent extinction unless preventive conservation measures are employed to reverse the current trend.

Issue 15: A few commenters stated that the Salt Creek tiger beetle should not be listed until a recovery plan or action plan is developed and approved. In addition, there needs to be an ''estimated probability'' that the Salt Creek tiger beetle will be saved by the recovery/action plan.

Our Response: Listing the Salt Creek tiger beetle will initiate recovery planning. During the Federal recovery planning process, a recovery team develops a recovery plan that establishes a framework for the conservation of the species. A recovery plan sets objectives and priorities, such as habitat restoration or enhancement, development of reintroduction protocols, and identification of potential release sites. It also assigns responsibilities to achieve those objectives, and estimates the associated costs of completion. Due to the countless variables involved, estimating the probability of recovery may not be possible. That said, the ultimate purpose of the recovery plan is to identify the necessary steps needed to conserve and recover the Salt Creek tiger beetle.

Issue 16: One commenter requested an additional 120-day comment period based on scientific uncertainty and economic impact of the proposed listing action.

Our Response: For the following reasons we denied an extension of the comment period: (1) economic impacts can not be considered in a final listing determination; (2) the Service does not believe there is any scientific uncertainty regarding the status of this subspecies, nor did the commenter provide any substantive information to illuminate this claim; and (3) the time constraints of an out-of-court settlement agreement required a final determination regarding the proposed listing action by September 30, 2005.

Issue 17: A few commenters said that the State and local governments were doing an adequate job of protecting the Salt Creek tiger beetle under their existing authorities and that Federal protection under the Act was unnecessary.

Our Response: We acknowledge that the City of Lincoln, Lancaster County and the State of Nebraska have been undertaking actions beneficial to the Salt Creek tiger beetle. Existing regulatory mechanisms that provide protection for the Salt Creek tiger beetle include: federally-implemented regulatory mechanisms such as the National Environmental Policy Act (NEPA) and section 404 of the Clean Water Act (CWA); State-implemented regulatory mechanisms such as the Nebraska State Water Quality Standards (as required by section 401 of the CWA) and the Nebraska Nongame and Endangered Species Conservation Act (NESCA); and local conservation planning efforts such as the 2002 City of Lincoln and Lancaster County Comprehensive Plan (Comprehensive Plan), the Little Salt Creek Valley Planning Cooperative Agreement co-sponsored by The Nature Conservancy (TNC), NGPC, and the Saline Wetland Conservation Partnership (SWCP) (a local conservation plan). However, Federal, State, and local laws, regulations, and policies have not been sufficient to prevent past and ongoing losses of Salt Creek tiger beetle habitat. Federal listing under the Act will provide additional protections. This issue is discussed under Factor D in the Summary of Factors Affecting the Species section below.

Also of significance to this issue, the Nebraska Game and Parks Commission recently commented on the proposed rule, ''* * * for the agencies to ultimately be successful in preventing the extinction of this highly endangered species, the Commission believes that it is necessary to utilize the regulatory oversight and funding resources that can be made available by (Federal) listing the Salt Creek tiger beetle as a federal endangered species.''

Issue 18: The City of Lincoln requested that the Service proceed with a final decision on whether to list the Salt Creek tiger beetle to eliminate the existing uncertainty, and to allow the City to move forward with planning decisions and development proposals.

Our Response: We understand the City's desire for a decision on this matter. In this action, the Service has finalized the proposal to list the Salt Creek tiger beetle as endangered under the Act.

Issue 19: The City of Lincoln identified numerous conservation measures and actions it has taken to protect and preserve the saline wetlands of eastern Nebraska and the Salt Creek tiger beetle. The City expressed conditional support for listing the Salt Creek tiger beetle, provided that there would be adequate Federal funding to establish science-based habitat needs to guide future growth of the City and Lancaster County while protecting the tiger beetle.

Our Response: We appreciate the efforts of the City of Lincoln and Lancaster County to work with us and other government entities, organizations, and landowners to protect the Salt Creek tiger beetle and its habitat. To date, the Service has provided funds under authority of section 6 of the Act to the City and County, to help with the purchase of high-priority habitats for the Salt Creek tiger beetle. In addition, section 6 funds have been made available to the University of Nebraska-Lincoln for research studies. We also have provided technical assistance to the City/County Planning Department by providing comments and recommendations for authorized or funded projects and activities that may impact the Salt Creek tiger beetle and its habitat. We look forward to continued work with the City/County and their partners in the

future, to allow for future growth of the City/County while protecting the Salt Creek tiger beetle and saline wetlands of eastern Nebraska. Although we cannot guarantee Federal funding will be provided in the future, we will make every effort to secure it.

Peer Review

In accordance with our July 1, 1994, Interagency Cooperative Policy for Peer Review in Endangered Species Act Activities (59 FR 34270), we solicited peer reviews from experts in the field of entomology who have extensive experience with tiger beetles. The purpose of such a review is to ensure that listing decisions are based on scientifically sound data, assumptions, and analyses, including input from appropriate experts. We received comments from five expert reviewers; four of the five experts have provided the Service with peer reviews on previous listing actions involving tiger beetles. Three research professors (from Denison University, Granville, Ohio; Arizona State University, Tempe, Arizona; and Randolph-Macon College, Ashland, Virginia) provided independent peer review. These experts have had direct experience with rare and federally listed tiger beetles throughout the United States and the world. In addition, two Salt Creek tiger beetle experts—a research technologist in entomology (with an M.S. degree) in the Entomology Department of the University of Nebraska-Lincoln, and a UNL entomology graduate student (who subsequently received an M.S. for his work on the Salt Creek tiger beetle)—reviewed the rule, particularly in regard to our interpretation of data on the status, trends, habitat requirements, and other biological requisites of the Salt Creek tiger beetle. The UNL research technologist has more direct field research experience on the Salt Creek tiger beetle than anyone, and the graduate student has conducted important research on the life history, habitat requirement, and captive rearing potential of the beetle. Both have published peer-reviewed scientific articles on the Salt Creek tiger beetle. Their review of the rule has helped ensure the scientific soundness of our interpretations and analyses.

All five experts strongly supported listing of the Salt Creek tiger beetle as endangered, based on the best available scientific information. Two experts provided corrections on minor factual issues, interpretation of the data, and citations. One reviewer identified that the proposed rule lacked information regarding a molecular phylogeny study that could be used to indicate the relationship within *Cicindela nevadica* and between other species of tiger beetles. However, his comments indicated that the lack of this information does not diminish the information presented in the proposed rule and the need to list the Salt Creek tiger beetle. The expert further stated that molecular phylogenetic studies of the Salt Creek tiger beetle could prove that this tiger beetle is a separate species, thus strengthening the argument for protection. All of the experts' information has been incorporated into this final rule where appropriate.

We also received comments from entomologists across the United States who have conducted research on tiger beetles, including the federally threatened Northeastern beach tiger beetle and Puritan tiger beetle. These reviewers also supported the listing of the Salt Creek tiger beetle under the Act, based on the information in the proposed rule.

In summary, no information was received from scientific experts to indicate that the Salt Creek tiger beetle is more widespread or less threatened than we had previously determined in the proposed rule. All peer reviewers support the endangered listing.

Summary of Factors Affecting the Species

Section 4 of the Act (16 U.S.C. 1533) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth procedures for determining a species or subspecies to be endangered or threatened due to one or more of the five factors described in section 4(a)(1) of the Act. These factors and their application to the Salt Creek tiger beetle are as follows:

A. Present or Threatened Destruction, Modification, or Curtailment of Habitat or Range

Background

As discussed in the proposed rule (70 FR 5101; February 1, 2005), the greatest threat to the Salt Creek tiger beetle is habitat destruction (Ratcliffe and Spomer 2002). Like many insects, the Salt Creek tiger beetle's close association with specific habitats—salt barrens and stream edges—leaves it particularly vulnerable to habitat destruction and alteration through direct and indirect means (Pyle *et al.* 1981). The saline wetlands of eastern Nebraska, associated saline streams, and freshwater wetlands used by the Salt Creek tiger beetle as dispersal habitat have undergone extensive degradation and alteration for commercial, residential, transportation, and agricultural development since the late 1800s, and are the most restricted and imperiled natural habitat type in the State (Gersib and Steinauer 1991).

In order to understand the complexity and immediacy of threats to the Salt Creek tiger beetle, it is necessary to understand when and how the destruction and degradation of the beetle's saline wetland and associated stream habitats took place. This is discussed at length in the proposed rule (70 FR 5101), and we refer the reader to that proposal for additional details beyond what is summarized here. The saline wetlands and associated streams of eastern Nebraska began to be ditched, drained, and filled beginning in the 1800s, (Murphy 1992; Russ et al. 2003). From the 1930s to the 1950s, saline wetlands continued to be destroyed for the development of Lincoln (Farrar and Gersib 1991), and in the 1960s, the construction of Interstate 80 resulted in additional filling, dredging, diking, draining, and diversion in the heart of the remaining Salt Creek tiger beetle habitat (Farrar and Gersib 1991). Commercial and residential developments, along with road construction, have resulted in the loss or degradation of the vast majority of barren salt flat and saline stream edge habitat for the Salt Creek tiger beetle.

The three remaining Salt Creek tiger beetle populations are being surrounded by commercial and residential development (Ratcliffe and Spomer 2002). Although the construction of buildings, homes, roads, schools, and parking lots is not occurring directly on salt flats and saline stream edges, these projects are occurring adjacent to these habitats. Such projects have resulted in the creation of impervious surfaces (e.g., access roads, parking lots) that do not allow precipitation to seep into the ground. Instead, these surfaces create frequent, high-volume freshwater runoff flows that enter the saline wetlands and associated streams, diluting their salinity and altering hydrology. In addition, runoff originating from other nearby, but not necessarily adjacent, residential and commercial developments and associated roads flows through constructed drainages, storm sewers, and tributaries, and contributes to an increase of freshwater inflow into saline wetlands and their associated streams.

Reduced salinity concentrations and increased sedimentation on barren salt flats and along saline stream edges have allowed the invasion of vegetation such as *Typha angustifolia* (cattail) and *Phalaris arundinacea* (reed canary

grass) into habitats used by the Salt Creek tiger beetle. These plants, ordinarily unable to tolerate high salinity, are aggressive invaders that convert sunny, barren salt flats into habitat that is dominated by an herbaceous overstory. Additionally, sedimentation from runoff at construction sites allow for fine silts to deposit on flats allowing for increased vegetation encroachment. The resulting vegetated habitat is unsuitable for use by the Salt Creek tiger beetle. The overstory shades out open, sunny areas required by the Salt Creek tiger beetle to thermoregulate, forage, and oviposit (M. Fritz, NGPC, pers. comm. 2001). Increased vegetative encroachment is the primary factor attributed to the extirpation of several populations of other *Cicindela* species (Knisley and Hill 1992).

Reduced salinity concentrations have resulted in other direct impacts. Based on field and laboratory studies using *Cicindela circumpicta* and *C. togata,* two tiger beetle species that are co-inhabitants with the Salt Creek tiger beetle on salt flats, Hoback et al. (2000) found that salt is required for ovipositing. Allgeier et al. (2004) concluded that a species-specific preference for salt and soil moisture regimes is important to habitat partitioning and reduction in competition between the Salt Creek tiger beetle and other tiger beetles. Hoback *et al.* (2000) also discovered that changes in salinity and hydrology may alter the abundance of prey and cause the loss of suitable larval habitat for saline wetland-dependent species of tiger beetles, including the Salt Creek tiger beetle. Once the hydrologic regimes of these saline wetlands and associated streams used by the Salt Creek tiger beetle are altered by salinity changes (oftern leading to vegetation encroachment), stream incisement (which lowers the water table), or other impacts such as bank stabilization, restoration and recovery of the habitats can be difficult (Langendoen et al. 2000) and expensive (see, for example, *http://www.environmentaltrust.org/work/awards.htm*).

Past and Present Habitat Quality and Quantity

A number of studies have attempted to quantify the amount and rate of habitat loss for the saline wetlands of eastern Nebraska. All of these studies confirm the extensive loss of saline wetlands, but vary in terms of their estimates for the total acres lost due to differences in data and methods of analysis. These various studies are discussed at length in the proposed rule (70 FR 5101). In 1993 and 1994, a team of biologists from various Federal and State agencies completed an intensive assessment, inventory, and categorization of the saline wetlands of eastern Nebraska. This assessment identified 98 sites that could be categorized as Category 1 saline wetlands comprising approximately 1,346 ha (3,327 ac) (Gilbert and Stutheit 1994). Category 1 saline wetlands provide saline wetland functions of high value or have the potential to provide high value following restoration or enhancement (Gilbert and Stutheit 1994). LaGrange (2003) further examined the Gilbert and Stutheit (1994) analysis, and divided Category 1 saline wetlands into three sub-classes: (1) not highly degraded and still functioning—totaling 85 ha (210 ac) (6 percent); (2) degraded, but still functioning as a saline wetland, and capable of restoration to full function—totaling 1,249 ha (3,087 ac) (93 percent); and (3) degraded and not functioning as a saline wetland, but restorable to full function—totaling 12 ha (30 ac) (1 percent).

Although it is important to discuss the overall loss of saline wetlands, the impact of that loss on the Salt Creek tiger beetle can only be fully assessed by considering the loss of barren salt flat and saline stream edge habitats that occur within the confines of Category 1 saline wetlands. We expanded on the analyses completed by LaGrange (2003) and Gilbert and Stutheit (1994) to complete such an assessment. Using a Geographic Information System (GIS), we did a habitat assessment of the remaining barren salt flat and saline stream edge habitats present within the remaining Category 1 saline wetlands. Using National Hydrography Dataset information (available online at http://nhd.usgs.gov) and all known locations of Salt Creek tiger beetles, we delineated saline stream edge habitat (J. Runge, USFWS, pers. comm. 2003). Next, we delineated barren salt flat habitat through the use of a feature-extraction process that would select areas containing similar spectral signatures of known barren salt flats. Finally, we evaluated our GIS analysis qualitatively by ground-truthing select polygons within the barren salt flat GIS layer.

Results from our assessment indicate that the total remaining areas of barren salt flat and saline stream edge habitat that exist within the saline wetlands of the Little Salt Creek and Rock Creek watersheds plus the remnant Salt Basin (*i.e.*, Capitol Beach) are approximately 15, 33, and 1 ha (38, 81, and 3 ac), respectively, for an overall total of 49 ha (122 ac). In consideration of the analysis completed by LaGrange (2003), we then conducted a spatial analysis to determine the amount of habitat currently available for the Salt Creek tiger beetle that is not highly degraded. The analysis separated coded barren salt flats into Category 1 subclasses identified by LaGrange (2003). Our analysis revealed that only approximately 6 ha (15 ac) out of the total 49 ha (122 ac) of coded salt barrens are not highly degraded. It is these remaining 6 ha (15 ac) of not highly degraded barren salt flats and saline stream edges that provide habitat for the Salt Creek tiger beetle.

As the quality of saline habitat continues to decline through reduction in size, encroachment of herbaceous species, and modification to hydrology, so too does the likelihood that the Salt Creek tiger beetle can survive and avoid extinction. Most of the habitat delineated in our analysis is composed of extremely small habitat complexes (*i.e.*, less than 0.04 ha (0.09 ac)) that are unlikely to provide all of the necessary life history requirements that the Salt Creek tiger beetle needs to survive. Further, these small habitats are in clusters resembling mosaics, separated by herbaceous overstory. This spatial dispersion precludes the use of these small areas by the Salt Creek tiger beetle. In addition, the loss of saline and freshwater wetlands further reduces the connectivity between populations. The loss of travel corridors eliminates genetic interchange and the ability to repopulate after catastrophic events (Murphy *et al.* 1990; Fahrig and Merriam 1994; Ruggerio *et al.* 1994; Noss *et al.* 2002). Spomer *et al.* (2004) reported that no Salt Creek tiger beetles were found in these small habitats in the 13 years that surveys were conducted. Carter (1989), NGPC (1999), Ratcliffe and Spomer (2002), Spomer and Higley (1993 and 2001), Spomer *et al.* (1997), and Allgeier *et al.* (2003) all concluded that the declining number of populations of Salt Creek tiger beetles is due to the loss of suitable saline wetland and stream habitat.

Urban Development and Road Construction

Commercial and residential urban development and road construction are the greatest threats to the saline wetlands of eastern Nebraska and the plant and animal species that depend upon these habitats (Gilbert and Stutheit 1994; Ratcliffe and Spomer 2002). Urban expansion of the City of Lincoln (Lincoln) and Lancaster County, fueled by growth in the human population of both the City and County, has contributed to the decline of the saline

wetlands of eastern Nebraska and associated streams, and the potential extinction of endemic taxa that use these areas, such as the Salt Creek tiger beetle. This growth and expansion was discussed in detailed in the proposed rule (70 FR 5101), and that rule should be consulted for more specifics. The accelerated population growth rate of the region has become particularly evident in the last year, as illustrated by urban and infrastructure developments (discussed below) that threaten the continued existence of the Salt Creek tiger beetle and its limited remaining habitat.

All three extant populations of Salt Creek tiger beetles may be threatened with extirpation as a result of expansion of urban development and road construction in Lincoln and Lancaster County. A review of 1989 and 2002 aerial photographs revealed that over 50 percent of the area surrounding the Little Salt Creek—Roper population (a 1,300-ha (3,200-ac) area bounded by Interstate 80 to the North, Salt Creek to the South, North 27th Street to the West, and Highway 77 to the East) has been developed within the last 5 years. The 2005 population survey results for this population were the lowest since monitoring began in 1991, with significant declines observed in each of the last three years. We reviewed the Comprehensive Plan and found that an additional 30 to 40 percent of the area surrounding the Little Salt Creek—Roper population has been planned for residential and commercial development over the next 25 years. However, given the current rate of growth and development surrounding this population, this additional area will likely be developed more quickly. In some cases, the local municipal development permits for the expansion have already been acquired (including some floodplain permits from Lincoln) (R. Harms, pers. obs. 2002 and 2003).

Development is currently underway in areas adjacent to the remaining segments of habitat for all three Salt Creek tiger beetle populations. These developments have already changed the drainage patterns in some areas, resulting in the introduction of excess freshwater, sediment, and contaminated urban runoff to saline habitats occupied by the Salt Creek tiger beetle. There also are planned highway projects which could adversely impact the species due to increases in freshwater runoff, vegetative encroachment, risks of toxic spills, and alteration of drainage patterns.

Increased vehicle traffic due to road improvements can increase the amount of contaminated runoff flowing into Little Salt Creek from vehicles and roadway surfaces. Highway runoff contains a variety of chemical constituents, many of which can be harmful to the environment when washed from roads by rain and snowmelt into adjacent surface waters, groundwater, and ecosystems (Bricker 1999). Contaminated runoff can impact the Salt Creek tiger beetle through toxic effects to the beetle, its prey base, and its habitat. For the expansion of Interstate 80, the Federal Highway Administration (FHWA) and Nebraska Department of Roads have identified measures that reduce concentrations of hazardous and toxic contaminants in highway runoff, and a contingency plan for accidental spills that would threaten two populations of Salt Creek tiger beetles (FHWA 2003). However, other planned non-Federal road and street projects that will be constructed after the Interstate 80 expansion do not currently address impacts to Salt Creek tiger beetle populations from road runoff.

Agriculture

Agricultural practices in the area also may threaten the limited Salt Creek tiger beetle habitat, especially for the Upper Little Salt Creek—North and Little Salt Creek—Arbor Lake populations. Livestock over-grazing can destroy or substantially degrade habitats for adult and larval forms of the Salt Creek tiger beetle through trampling, which can destroy Salt Creek tiger beetle larvae burrows and the larvae that inhabit them (Spomer and Higley 2001). Cattle grazing also can compact soil and modify soil hydrology, gradually drying out a site and making it unsuitable for adults and larvae (which prefer moist, muddy sites with encrusted salt on soil surfaces). Further, erosion of sediment into Salt Creek tiger beetle habitat from overgrazed areas can change the topographic elevation of the habitat and render it unsuitable. The Upper Little Salt Creek—North population occurs along a segment of Little Salt Creek that flows through a pasture, and one of these population survey sites may have been negatively impacted by cattle grazing (Spomer and Higley 2001; Spomer et al. 2004a). After cattle grazing was halted at this site in 2004, the habitat improved and observed population numbers increased (Spomer et al. 1997, 1999, 2001, 2002, 2004a, 2004b; Allgeier *et al.* 2003; S. Spomer, UNL, pers. comm. 2005).

Cultivation also poses a threat to the largest remaining population of Salt Creek tiger beetles, the Little Salt Creek—Arbor Lake population. Cultivation can increase sediment erosion that can cover larval burrows as well as change soil salinity and encourage vegetative encroachment. Such areas may no longer be suitable for ovipositing, larval, or foraging habitat. When an area of larval habitat becomes degraded and then disappears, so does the species that it supports (Dunn 1998). The data now support this assertion. After one such site adjacent to a cultivated field was plowed in the fall/winter of 2002/2003, the habitat became increasingly vegetated, and observed counts declined from 45 in the summer of 2002 to zero in 2005 (Spomer et al. 2002, 2004a, 2004b; Allgeier et al. 2003; S. Spomer, UNL, pers. comm. 2005; Robert Harms, USFWS, pers. comm. 2005). Such cultivation may also result in the introduction of pesticides into adjacent saline wetlands unless a vegetative buffer is in place. Historic and anticipated impacts related to flooding are discussed later in Factor E of the Summary of Factors Affecting the Species section of this rule.

Stream Channelization, Bank Stabilization, and Incisement

In Nebraska, many river and stream systems, including Salt Creek and its tributaries, have undergone extensive channelization for flood control to protect both agricultural and urban developments. Channelization of Salt Creek from Lincoln to Ashland, Nebraska, was done a section at a time from 1917 to 1942 by the Army Corps of Engineers (COE) (Farrar and Gersib 1991; Murphy 1992). In the 1950s, the COE and USDA further modified the area when they developed and implemented a flood control plan that involved the construction of levees, reservoirs, and additional channelization of Salt Creek (Murphy 1992). Farrar and Gersib (1991) found that the greatest alteration of saline wetlands in the Little Salt Creek and Rock Creek drainages resulted from the channelization of Salt Creek. Channelization of Salt Creek encouraged tributary streams (Little Salt Creek, Oak Creek, Rock Creek, and Middle Creek) to head-cut, carving deeper into their beds to adjust to the change in stream bed gradients. Straightening stream channels leads to a state of instability, often causing stream entrenchment and corresponding changes in morphology and stability (Rosgen 1996). The lowering of tributary streambeds in the Salt Creek drainage resulted in the degradation and loss of saline wetlands by draining and lowering the water table and diluting salt concentrations with fresh water, which led to vegetative encroachment (Wingfield et al. 1992).

In 1992, the largest population of Salt Creek tiger beetles, the Little Salt Creek—Arbor Lake population, was significantly impacted by a stream channelization and bank stabilization project along Little Salt Creek (Spomer and Higley 1993; Farrar 2003). In an attempt to control erosion and bank sloughing and to prepare for the widening of North 27th Street, a portion of Little Salt Creek was straightened, and its banks were armored with rock riprap. These actions destroyed about one-half of the remaining prime habitat for the Salt Creek tiger beetle along Little Salt Creek (Spomer and Higley 1993; Farrar 2003). Based on surveys conducted in 1991 and 1992, the Little Salt Creek—Arbor Lake population exhibited a corresponding 55 percent decline (from 171 to 94) after the project was completed (Spomer and Higley 1993). In this circumstance, stabilization of about half of the bank resulted in the loss of over half of the population of Salt Creek tiger beetles. It is unclear why the population at the site was able to recover following such an event, but it is possible that favorable weather conditions, suitable habitat within the tiger beetle's travel distance, or other unknown factors could have contributed to their survival.

The lower portion of Little Salt Creek, where the two largest remaining populations of Salt Creek tiger beetles exist, has become deeply incised by human activities, resulting in the creation of vertical stream banks measuring approximately 6 to 9 m (20 to 30 ft) in height (J. Cochnar and R. Harms, USFWS, pers. obs. 2002). Bank sloughing is covering saline stream edges and reducing the amount of suitable habitat for the two populations. The Little Salt Creek—Arbor Lake and Little Salt Creek—Roper populations of the Salt Creek tiger beetle may have been able to survive because they exist in areas where there is still a functioning saline wetland and saline stream complex. However, if these two areas evolve into stable, vegetated, incised stream systems and the wetland habitats continue to receive freshwater runoff from surrounding urban development, the existing suitable habitats for the Salt Creek tiger beetle will likely be altered and no longer support these two populations. This could almost certainly result in the extinction of the Salt Creek tiger beetle, given that the remaining third population is so small.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Tiger beetles (genus *Cicindela*) are one of the most sought-after genera of beetles by amateur collectors because of their unique metallic colors and patterns as well as their fascinating habits (NGPC 1999; 66 FR 50340). Interest in the genus *Cicindela* is reflected in a journal entitled ''Cicindela,'' which has been published quarterly since 1969 and is exclusively devoted to the genus. Even limited collection pressure on small populations of taxa such as the Salt Creek tiger beetle can have adverse impacts on a species' viability because of the loss of genetic variability it causes (Spomer and Higley 1993). At present, we do not know if the collection of adult Salt Creek tiger beetles is a factor contributing to its decline.

Regarding potential scientific overutilization, the Service and NGPC are funding studies on the Salt Creek tiger beetle to improve our understanding of its biology and habitat requirements with the ultimate goal of supporting captive rearing and transplantation. We believe this research will ultimately contribute to the conservation of the subspecies. Transplanting larvae of other species of rare tiger beetles has been conducted elsewhere by removing larvae from one site and introducing them to another unoccupied site. For example, successful larvae translocations of the federally listed Northeastern beach tiger beetle have been conducted at sites where populations were previously extirpated (Knisley *et al.* 2005). A preliminary recovery plan draft for the subspecies (Spomer *et al.* 2004) suggests that Salt Creek tiger beetles will need to be introduced into suitable, unoccupied habitats through the rearing and translocation of captive larvae. Captive-rearing of Salt Creek tiger beetle larvae for introduction into suitable saline habitats is underway through Service- and NGPC-funded studies at UNL (Allgeier *et al.* 2003). A small number of adult Salt Creek tiger beetles were captured and removed from their habitat, and subsequently placed in a laboratory setting. The removal of a small number of adults will slightly reduce a population in the short term, but if successful, such a program will preserve and enhance the genetic variability of the subspecies, as well as facilitate its recovery.

C. Disease or Predation

No information is available to determine if the Salt Creek tiger beetle is susceptible to diseases that could threaten its survival. However, the Salt Creek tiger beetle is affected by several predacious and parasitic species that are commonly observed in its habitat. Spiders (Salticidae and Lycosidae), predatory bugs (Reduviidae), beetles (Histeridae and Cantharidae), birds, shrews (Soricidae), raccoons (*Procyon lotor*), lizards (*Lacertilia* sp.), toads (Bufonidae), robber flies (Asilidae), ants (Formicidae), wasps (Chalcididae and Tiphiidae), bee flies (Bombylidae), and dragonflies (*Anisoptera* sp.) all prey on the Salt Creek tiger beetle (Lavigne 1972; Nagano 1982; Pearson 1988). A robber fly was observed preying on an adult Salt Creek tiger beetle it had caught in flight and pulled to the ground (Spomer and Higley 2001). Ants can overwhelm, kill, and devour larvae confined to their burrows (Spomer and Higley 2001). Larger species of tiger beetles (*Cicindela circumpicta*) have been known to prey on smaller-sized tiger beetles (*C. togata*), especially those species that occupy similar habitats (Hoback *et al.* 2001). Both *C. togata* and *C. circumpicta* are found in the same habitats as the Salt Creek tiger beetle and both may prey upon it (Spomer and Higley 2001; Spomer *et al.* 2004a). Parasitic wasps can sting the larvae, resulting in paralysis, and then lay eggs which hatch and feed on the larvae (Spomer and Higley 2001). Bee flies hover over larval burrows and flip eggs into the entrances (S. Spomer, pers. comm. 2002). After the eggs hatch, the bee fly maggots attach themselves to the Salt Creek tiger beetle larvae and feed on them.

Predators and parasites play important roles in the natural dynamics of populations and ecosystems. Predators and parasitoids of the Salt Creek tiger beetle evolved in conjunction with the beetle and do not normally pose a severe threat to the survival of the population. However, predation and parasitism of adults and larvae may account for significant mortality of the Salt Creek tiger beetle because of the small size of the remaining populations, limited distribution, reduced habitat, and close proximity of the two largest populations (L. Higley, pers. comm. 2002). Hoback *et al.* (2001) indicated that reduced saline habitats, coupled with a limited prey source, may result in greater predation by *Cicindela circumpicta* and *C. togata* on the Salt Creek tiger beetle. At this time, it is unknown whether predation and parasitism on the Salt Creek tiger beetle are a threat to its survival.

D. Inadequacy of Existing Regulatory Mechanisms

Overview

Federal, State, and local laws, regulations, and policies have not been sufficient to prevent past and ongoing losses of Salt Creek tiger beetle habitat. Existing regulatory mechanisms that provide minimal, but not adequate, protection for the Salt Creek tiger beetle include: federally-implemented regulatory mechanisms such as the NEPA and section 404 of the CWA; State-implemented regulatory mechanisms such as the Nebraska State Water Quality Standards (as required by section 401 of the CWA) and NESCA; and local conservation planning efforts such as the Comprehensive Plan, the Little Salt Creek Valley Planning Cooperative Agreement co-sponsored by TNC, NGPC, and SWCP (a local conservation plan).

Federally Implemented Regulatory Mechanisms

While NEPA and CWA are important environmental protection statutes, neither provides specific protection to non-listed species. The NEPA is a procedural statute that requires full consideration and disclosure of the environmental impacts of a project. It does not require protection of a particular species or its habitat, nor does it require the selection of a particular course of action.

Under section 404 of the CWA, the COE does not regulate wetland drainage activities that do not result in a discharge of dredged or fill material into waters of the United States nor sediment inputs originating from upland sources. The effects of these activities could have substantial adverse impacts on saline wetlands and associated streams used by larval and adult forms of the Salt Creek tiger beetle. Additionally, the COE Regulatory Program in Nebraska has limited regulatory authority over the types of road and urban development projects that have already destroyed or further degraded over 90 percent of the historical saline wetlands of eastern Nebraska (Murphy 1992), which have led to a corresponding loss of Salt Creek tiger beetle habitat, including barren salt flats, saline stream edges, and seeps.

The proposed rule (70 FR 5101; February 1, 2005) provided two examples of permitted activities and prescribed mitigation authorized by the COE under section 404 of the CWA, and the reader is referred to that rule for a detailed description of the examples. Our conclusion line is that, aside from the Arbor Lake area acquisition, the preservation and restoration of Category 1 saline wetlands as mitigation measures for permitted activities have provided minimal habitat benefits to the Salt Creek tiger beetle to date.

A Supreme Court ruling in 2001 limited Federal authority under the CWA to regulate certain isolated wetlands (*Solid Waste Agency of Northern Cook County* vs. *U.S. Army Corps of Engineers*, 531 U.S. 159) (SWANCC). The proposed listing rule (70 FR 5101) discusses the SWANCC ruling in depth, as well as the consequences thereof for COE and Environmental Protection Agency (EPA) jurisdiction over wetlands. We refer the reader to that rule for additional details. In Nebraska, the COE does not regulate any wetland that is determined to be isolated unless it can be proven that there is some kind of commercial use (*e.g.*, a public boat ramp on the wetland) aside from migratory bird use or a surface connection (COE 2001).

Stream channelization and certain bank stabilization projects are regulated by the COE under section 404 of the CWA, but this regulatory mechanism has proven ineffective in preventing impacts to stream habitats used by the Salt Creek tiger beetle. As described above in Factor A, about half of the remaining habitat for the largest population of the Salt Creek tiger beetle was lost along Little Salt Creek after the completion of a COE-permitted stream bank stabilization and channelization project in 1992 (Spomer and Higley 1993; Farrar 2003).

Many of the saline wetlands that provide habitat for the Salt Creek tiger beetle are associated with the floodplain of adjacent streams. Stream channelization and bank stabilization projects conducted for flood control have caused channel incision and have necessitated additional bank stabilization projects further downstream or in feeder tributaries. Since the Salt Creek tiger beetle was listed as endangered by the State of Nebraska in 2000, the COE has considered the beetle in its evaluation of permits (M. Rabbe, COE, pers. comm. 2001). However, the COE evaluation has resulted in only limited benefits to the Salt Creek tiger beetle because construction activities in upland areas surrounding aquatic habitats are not within the COE's jurisdiction. Many projects qualify for a general permit (*i.e.*, Nationwide Permit 13 (bank stabilization)) that does not need to be individually reviewed by the COE. Further, some landowners attempt to avoid obtaining a Department of the Army permit and the associated Federal oversight, for example, by creating windrow piles of concrete riprap along the high bank of the stream in anticipation that, once the streambank erodes far enough landward, the riprap will fall in on its own and stabilize the bank. In such cases, the COE cannot exercise regulatory jurisdiction over windrowed riprap until there is a discharge below the ordinary high water mark, and even then, only if that discharge threatens the navigability of a stream or is prohibited for use as a fill material (COE Regulatory Guidance Letter MRO 96–11, June 17, 1997). Both regulated and unregulated bank stabilization activities have occurred on Little Salt Creek and have adversely affected Salt Creek tiger beetle habitat.

State Implemented Regulatory Mechanisms

Under section 401 of the CWA, the NDEQ issues a Water Quality Certification whenever a Department of the Army permit is authorized by the COE; this Certification is also necessary to meet Nebraska State Water Quality Standards. The NE Water Quality Standards recognize all wetlands in the State as ''waters of the State,'' including isolated wetlands that are no longer under Federal jurisdiction as a result of *SWANCC* vs. *U.S. Army Corps of Engineers*. However, the State does not have a permit program for authorizing activities in wetlands, and NDEQ can only take action (*i.e.*, an enforcement action) after an impact to a non-Federal isolated wetland occurs. After-the-fact enforcement actions under the Water Quality Standards are unlikely to offset adverse impacts that have already occurred to the Salt Creek tiger beetle in isolated saline wetlands, given their highly specific habitat requirements and low population numbers. Finally, the Water Quality Standards are not aligned with quantitative biological criteria, and thus projects may still have negative impacts on saline wetlands of eastern NE and associated streams that provide habitats needed to meet life requirements of both larval and adult Salt Creek tiger beetles.

On March 17, 2000, the Salt Creek tiger beetle was listed as endangered under the NESCA by NGPC. The NESCA: (1) Prohibits the ''take'' of State listed species (''take'' is defined as a means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect, or attempt to engage in such conduct); (2) authorizes State agencies to carry out programs for the conservation of State listed endangered and threatened species; (3) requires State agencies to take such actions necessary to ensure that actions authorized, funded, or carried out by the State do not jeopardize the continued existence of

such State listed endangered or threatened species or result in the destruction or modification of habitat for such species; and (4) requires all State agencies to consult with NGPC to ensure that jeopardy is avoided. However, NESCA does not authorize NGPC to review Federal actions or to consult with Federal agencies for projects or activities that may affect State listed species such as the Salt Creek tiger beetle. In addition, although NESCA allows NGPC to identify critical habitat for State-listed species, regulations that would allow such designations to be implemented were never developed.

Local Conservation Planning

In a joint effort to plan long-term development projects for Lincoln and Lancaster County, city and county officials approved a Comprehensive Plan. The approved Comprehensive Plan proposes that development not occur along the portions of Little Salt Creek north of Lincoln's city limits. As part of the Comprehensive Plan, Lincoln has placed a 150-m (500-ft) wide buffer around Little Salt Creek and its adjacent saline wetlands until a determination can be made through research on whether the buffer is needed to protect the Salt Creek tiger beetle. The buffer does not apply for development projects within the City limits, including areas around the Little Salt Creek—Arbor Lake and Little Salt Creek—Roper populations. The Comprehensive Plan is a helpful guide for the growth and development of Lincoln and Lancaster County but it provides no legal assurances and is not an enforceable regulatory mechanism.

In 2000, TNC and NGPC organized the Little Salt Creek Valley Planning Cooperative agreement. The purpose of this cooperative agreement was to organize stakeholders, mainly private landowners, in the Little Salt Creek watershed into a coalition to preserve and protect eastern Nebraska saline wetlands and associated watershed streams in the northern third of Lancaster County. After 18 months of unsuccessful negotiations, this conservation effort was dissolved.

In 2003, Lincoln, Lancaster County, the Lower Platte South Natural Resources District, TNC, and NGPC formed the SWCP. The SWCP (2003) developed a plan that focuses on the conservation of saline wetlands in Lancaster and Saunders Counties. Although not specifically focused on the protection and management of the Salt Creek tiger beetle, the SWCP's efforts will benefit the species. One of the strategies of the SWCP's plan is to protect saline wetlands using existing Federal, State, and local laws. Another strategy is to use existing grant programs to acquire saline wetlands either through simple fee title or conservation easements. To date, the SWCP has acquired five parcels of land containing saline wetlands. Due to the high value of land, and shortage of Federal, State, and local government agency funds, protection of Salt Creek tiger beetle habitat through acquisition is expected to be limited.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Overview

Local extinctions caused by habitat deterioration and stochastic weather events are not uncommon for species and subspecies, such as the Salt Creek tiger beetle, whose life histories are characterized by short generation time, small body size, high rates of population increase, and high habitat specificity (Murphy *et al.* 1990; Ruggerio *et al.* 1994). The remaining populations of the Salt Creek tiger beetle are highly susceptible to extinction as a result of naturally-occurring, stochastic, environmental, or demographic events because they occur at only three known locations, in small numbers, and in relatively close proximity to each other. Such events could include: (1) Heavy rain storms and severe flooding that drown and scour larvae away, dilute salinity, and result in sediment deposition; (2) accidental spillage of hazardous materials due to nearby, up-slope traffic accidents; or (3) runoff containing a recently applied insecticide flowing into habitats occupied by the Salt Creek tiger beetle along Little Salt Creek. Murphy *et al.* (1990) and Gilpin (1987) recognized a direct association between increased extinction rates of a species and reduced habitat areas, distances between populations, and small population size. The negative effects of habitat fragmentation and loss on the total number of individuals within a population include the Allee effect (the positive relationship between population density and the reproduction and survival of individuals) (Allee 1931, Keitt *et al.* 2001), the loss of genetic diversity (Lacy 1987), and increased mortality from catastrophic events (Murphy *et al.* 1990).

Available information, including 2005 Salt Creek tiger beetle population surveys and a review of U.S. Geological Survey topographic maps showing the location of populations, indicates that 89 percent of the remaining Salt Creek tiger beetles are located within a 1.2-km (0.7-mi) radius of the Interstate 80 and North 27th Street, and, therefore are in an area of ongoing residential and commercial development. Based on the best available scientific information, we believe that further degradation or loss of suitable habitats and the resulting increased distance between areas of suitable habitat will further reduce the likelihood that Salt Creek tiger beetles will be able to move and recolonize other sites and establish additional populations. If so, as existing occupied habitats become smaller and smaller, existing populations of Salt Creek tiger beetles may be extirpated.

Floods and Droughts

The extirpation of a local population of Salt Creek tiger beetles has already occurred due to a natural flood event. Although tiger beetle larvae are able to withstand submersion for prolonged periods (possibly up to 2 weeks) (Hoback *et al.* 1998; L. Higley, pers. comm. 2001), flooding results in soil erosion of larval burrow sites and washes larvae downstream. Flooding also results in the deposition of sediments from adjacent agricultural lands into larval and adult habitats. In the mid-1980s, floodwaters carried large loads of sediment from adjacent cropfields and deposited then into the saline wetlands associated with Rock Creek in northern Lancaster and southern Saunders Counties (Spomer *et al.* 2004a; M. Fritz, pers. comm. 2003). This flood covered barren salt flats used by Salt Creek tiger beetles in the Jack Sinn WMA population. The mid-1980s flood resulted in the loss of Salt Creek tiger beetle larvae because of the depth of sediment deposited. The larvae were unable to remove the 8 to 10 cm (3 to 4 in.) of sediment deposited onto their burrows because they extract excess soil material out and away from their burrow, not inward (Spomer *et al.* 2004a). The mid-1980s flood also changed the vegetation of the area. After the flood, a thick herbaceous overstory composed of reed canarygrass and cattail infested the area, making it unsuitable for the Salt Creek tiger beetle. In 1993, back-to-back 50-year rain events inundated the entire area, including the saline wetlands and habitat of the Jack Sinn WMA population (USDA 1996). Surveys of the Jack Sinn WMA population have found only two individuals since 1993, and no individuals since 1998. As previously mentioned, the Jack Sinn WMA population is considered to be extirpated.

Extirpation of either the Little Salt Creek—Arbor Lake population or Little

Salt Creek—Roper population, or both, is highly likely to occur if the Little Salt Creek drainage experiences an event similar to the 1993 flood in the Rock Creek drainage. Flooding, even after a normal rainfall, is likely to occur at a higher frequency and volume due to the increased storm water runoff from developments and channelization of tributaries.

Drought also may have impacted prey populations, leading to higher mortality rates of the Salt Creek tiger beetle (Spomer and Higley 2001; Ratcliffe and Spomer 2002). Dry conditions result in the loss of moist saline seep habitat used as larval, ovipositing, and foraging habitat by the Salt Creek tiger beetle. Drought also can change the abundance and diversity of prey items used by adult and larval Salt Creek tiger beetles (Allgeier *et al.* Nebraska, 2002 was the third driest year on record (115 years) (Nebraska's Climate Assessment and Response Committee 2003), and June 2002 was the driest month on record (UNL 2003). June is the month when the Salt Creek tiger beetle is most active. Leon Higley (pers. comm. 2003), an expert on the Salt Creek tiger beetle, predicts that if the drought that Nebraska has experienced over the past couple of years continues, the number of individuals remaining in the Salt Creek tiger beetle populations will decline due to the lack of prey available to the beetle and its larvae.

Pesticides

Corn, soybean, and sorghum fields dominate the Little Salt Creek watershed, and are potential sources of pesticide exposure to Salt Creek tiger beetles and their habitat. Insecticides that enter occupied habitats of the Salt Creek tiger beetle through runoff have the potential to directly impact the tiger beetle or indirectly impact through modification of prey availability. There have been no studies to evaluate pesticide exposure and adverse effects to Salt Creek tiger beetles. However, research on ground beetles (*Carabidae*) suggests pesticide exposure may place the Salt Creek tiger beetle at risk as a result of decreased survival and reproduction. This research was discussed in detail in the proposed rule (70 FR 5101; February 1, 2005), and is summarized briefly here. In one study, dietary and topical exposure of ground beetles (*Harpalus pennsylvanicus*) to a carbamate insecticide (bediocarb) and a chloro-nicotinyl insecticide (imidacloprid) resulted in lethal and sublethal effects (Kunkel *et al.* 2001). Bendiocarb and imidacloprid are used to control insects in corn (Extoxnet 1996). Other carbamate pesticides recommended for use in corn, soybean, and sorghum production in Nebraska include carbofuran, methomyl, thiodicarb, trimethacarb, and carbaryl (Wright *et al.* 1994; Hunt 2003). In a field experiment in England designed to study the effects of pesticides on nontarget invertebrates, researchers found that chlorpyrifos and fonofos (both organophosphate pesticides) affected the activity of ground beetles, and this effect seemed the result of direct toxicity rather than a depleted prey base (Luff *et al.* 1990). Organophosphate and pyrethroid pesticides are used on corn, soybean, and sorghum crops in Nebraska include chlorpyrifos, malathion, methyl parathion, dimethoate, ethoprop, fonofos, phorate, terbufos, tefluthrin, tralomethrin, permethrin, esfenvalerate, cyfluthrin, zeta-cypermethrin, and lambda-cyhalothrin (Wright *et al.* 1994; Hunt 2003).

Salt Creek tiger beetles also may be susceptible and exposed to pesticides applied to control mosquitoes, grasshoppers, and pests in residential yards and gardens. Nagano (1982) reported an entire population of tiger beetles (*Cicindela haemorrhagica* and *C. pusilla*) in Washington State being eradicated by pesticides, while the disappearance of the tiger beetle *C. marginata* in New Hampshire was believed to be the result of insecticide spraying to control salt marsh mosquitoes (Dunn 1978, as cited by Nagano 1982). Insecticides applied to lawns and landscaping in residential and commercial developments near Little Salt Creek have the potential to enter the creek and impact the Salt Creek tiger beetle and its prey base. A local government has proposed for the last 2 years to apply pesticide for the control of mosquitoes along Little Salt Creek where the Little Salt Creek-Roper population exists. To date, given the concerns expressed by NGPC, pesticides have not been applied. However, we also note that some commenters on the proposed rule stated that they rarely use pesticides, especially insecticides. Additionally, they referred to the current existence of buffer strips along Little Salt Creek that may serve to limit any contamination problems from ground application of pesticides (but this will not limit aerially-applied pesticides).

Artificial Lights

Artificial lights along streets and highways, particularly mercury vapor lamps, may contribute to population losses of the Salt Creek tiger beetle because such lights have been implicated in population losses of nocturnal insects elsewhere (Pyle *et al.* 1981). Adult tiger beetles of many species are attracted to lights at night, resulting in unnecessary and detrimental nocturnal dispersal (Pearson 1988). Larochelle (1977) documented 122 species and subspecies of *Cicindelidae* found at night light sources. Tiger beetle species attracted to light sources at night included *C. togata*, *C. fulgida*, and *C. circumpicta* (Willis 1970). The subspecies, *C. n. knausii*, the closest relative to the Salt Creek tiger beetle, also is attracted to artificial light sources at night (Willis 1970). Pearson (1988) reported that several specimens of *C. trifasciata* have been collected at night lights on off-shore oil platforms in the Gulf of Mexico.

Allgeier *et al.* (2003) found that female Salt Creek tiger beetles oviposit at night and that outdoor light sources may reduce reproduction. Fewer eggs may be deposited if artificial light sources draw females away from their breeding habitat (Allgeier *et al.* 2003). Allgeier *et al.* (2003) found that Salt Creek tiger beetles were attracted to artificial light in the following order of preference: (1) Black light; (2) mercury vapor; (3) incandescent; (4) fluorescent; and (5) sodium vapor. They recommended an 805-m (2,640-ft) or (0.8-km (0.5-mi)) buffer zone to protect all existing Salt Creek tiger beetle populations from possible outdoor light attractant sources.

Movement away from habitat to lighted areas, such as areas surrounding major transportation routes (*e.g.*, Interstate 80) and associated developed areas, may increase energy expenditure, reduce reproductive success, and ultimately impact the survival of the Salt Creek tiger beetles in the two largest beetle populations, the Little Salt Creek—Roper and Little Salt Creek—Arbor Lake populations (Allgeier *et al.* 2004). Distances between outdoor light sources (within commercial and residential developments) and the Little Salt Creek—Roper and Little Salt Creek—Arbor Lake populations are less than the 800-m (3,000-ft) buffer recommended by Allgeier *et al.* (2003).

Electric insect light traps are possibly a greater threat to the Salt Creek tiger beetle than lights illuminating urban streets, houses, parking lots, etc. These light traps use ultraviolet light to attract flying insects toward an electrified metal grid where they are destroyed (Frick and Tallamy 1996). Another type of trap that uses black light, a form of ultraviolet light, has a sticky paper backing where the insects are caught and die. Electric insect light traps have been used extensively since the mid-1900s for research and surveillance in

disease prevention, and control of indoor and outdoor insects in homes as well as in agricultural and industrial operations (Urban and Broce 1999). Frick and Tallamy (1996) found 13,789 insects that were electrocuted by electric insect light traps at 6 sample sites. Of these, 6,670 insects (48 percent) were nontarget and nonharmful aquatic insects from nearby rivers and streams, and 1,868 of these insects (14 percent) were predators and parasites of the targeted, harmful insects. Black-light or ultraviolet based insect traps could become an ever increasing threat as residential and commercial development continues to encroach upon the two largest populations of Salt Creek tiger beetles.

Conclusion of Status Evaluation

In making this final rule determination, we carefully assessed the best scientific and commercial information available regarding past, present, and future threats to the Salt Creek tiger beetle. The immediate threats to the Salt Creek tiger beetle are associated with the extremely small, fluctuating populations, the number of which has declined by 50 percent since surveys began in 1991, and habitat degradation, destruction, and fragmentation. The Salt Creek tiger beetle is currently restricted to three populations on approximately 6 ha (15 ac) of not highly degraded barren salt flats and saline stream edge habitats contained within the eastern Nebraska saline wetlands and associated saline streams (*i.e.*, Little Salt Creek). Eighty-nine percent of all remaining Salt Creek tiger beetles are located approximately 1.6 km (1 mi) apart, making them especially susceptible to extirpation from a single catastrophic event. They also are located within a 1.2-km (0.7-mi) radius of the Interstate 80 and North 27th Street Interchange and the associated growth and development that is underway. Finally, the 2005 surveys found only 153 Salt Creek tiger beetles. Although observed tiger beetle populations have fluctuated over the period of visual surveys (1991–2005), the 2005 results are the third lowest count since 1991, and the lowest in the past 12 years. Since 2002, the total number of Salt Creek tiger beetles observed through visual surveys has declined by about 80 percent (*i.e.*, from 777 individuals in 2002 to 153 individuals in 2005). Despite the annual variation in numbers counted, Salt Creek tiger beetle populations are at or below minimum viable population sizes (*i.e.*, 500 to 1,000 individuals) and actual population sizes for other listed tiger beetle species (*e.g.*, Northeastern beach and Puritan tiger beetles).

As discussed in Factor A of the Summary of Factors Affecting the Species section of this rule, a number of urban and agricultural development projects threaten the Salt Creek tiger beetle with extinction. Ongoing residential and commercial developments may threaten all remaining populations of the Salt Creek tiger beetle with extirpation. These developments can cause changes to hydrologic regimes, resulting in freshwater inflows and sediment runoff, which in turn reduces salinity concentrations and encourages vegetation invasion into previously unvegetated saline habitats. Proposed projects, such as road expansions, also pose threats to the two largest remaining populations of the Salt Creek tiger beetle.

Other immediate threats to the habitat of the Salt Creek tiger beetle are sediment erosion from adjacent agricultural fields and urban development construction sites; livestock grazing (trampling of larvae burrows); changes in saline stream morphology; and drainage of saline wetlands due to the incisement of associated streams.

As discussed under Factor D, existing regulatory mechanisms have not proven to be adequate to deter habitat loss and population reductions of the Salt Creek tiger beetle, and this inadequacy serves as a contributing factor to the subspecies' endangered status.

The Salt Creek tiger beetle also is vulnerable to chance environmental or demographic events (*e.g.*, flood, drought, disease, and pesticides). As discussed in Factor E, extirpation of the Jack Sinn WMA population of Salt Creek tiger beetles occurred after such an event. The combination of the close proximity of the two largest populations, and restricted, specialized, and diminishing aquatic habitats, makes the Salt Creek tiger beetle highly susceptible to extinction across its entire range from any one chance environmental event.

The fate of the Salt Creek tiger beetle likely depends upon the establishment of additional populations in suitable habitats at other locations through a captive rearing program so that random demographic events or environmental catastrophes are less likely to cause the extinction of the beetle. As the number of Salt Creek tiger beetle populations has declined to just three, and these are subject to numerous immediate, ongoing, and future threats as described above, we have determined that the Salt Creek tiger beetle is in danger of extinction throughout all of its range (section 3(6) of the Act) and, therefore, meets the Act's definition of endangered.

Critical Habitat

Critical habitat is defined in section 3 of the Act as—(i) The specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species, and (II) that may require special management considerations or protection, and (ii) specific areas outside the geographical area occupied by the species at the time it is listed in accordance with the provisions of section 4 of the Act, upon a determination by the Secretary of the Interior that such areas are essential for the conservation of the species. ''Conservation'' means the use of all methods and procedures needed to bring the species to the point at which listing under the Act is no longer necessary.

Section 4(a)(3) of the Act and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary of the Interior designate critical habitat at the time the species is determined to be endangered or threatened. The Service believes critical habitat for the Salt Creek tiger beetle is both prudent and determinable. However, because of the critically imperiled status of Salt Creek tiger beetle, limited financial and personnel resources available to work on this taxon, and the Service's belief that listing confers greater protection on a species than does critical habitat, we have assigned a higher priority to promptly publishing the final listing rule for Salt Creek tiger beetle than to proposing and designating critical habitat, as allowed pursuant to section 4(b)(6)(C)(i). Funds have been budgeted for identification of critical habitat, and work on a proposed designation is underway. We plan to publish a proposed rule to designate critical habitat for Salt Creek tiger beetle in the near future.

Available Conservation Measures

In anticipation of the Service's listing the Salt Creek tiger beetle under the Act, the NGPC notified us in a letter, dated February 28, 2003, that it was planning to develop a Regional Habitat Conservation Plan (HCP) pursuant to section 10(a)(1)(B) of the Act for the Salt Creek tiger beetle. Letters of support to NGPC from the City of Lincoln, Lancaster County Board of

Commissioners, Lower Platte South Natural Resources District, Nebraska Department of Roads, UNL, and TNC were included as part of the HCP proposal. The NGPC identified the need for the Regional HCP to provide long-term protection of the Salt Creek tiger beetle and its habitats in the eastern Nebraska saline wetlands and associated streams and provide regulatory certainty for the citizens of Lancaster and Saunders Counties.

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer informally with us on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is subsequently listed, section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with us.

Federal agency actions that may affect the Salt Creek tiger beetle and may require consultation with the Service include, but are not limited to, those within the jurisdiction of the Service, COE, EPA, FHWA, Department of Housing and Urban Development (HUD), Federal Housing Administration (FHA), Federal Aviation Administration (FAA), Natural Resources Conservation Service (NRCS), and Farm Service Agency (FSA).

Federal agencies expected to have regulatory involvement with the Salt Creek tiger beetle or its habitat include the COE and EPA, due to their permit and enforcement authority under section 404 of the CWA. In addition, EPA will be involved through provisions of section 402 of the CWA. The FHWA has authority and funding responsibilities for highway construction projects that could have impacts on habitat both formerly and presently occupied by the Salt Creek tiger beetle. HUD and the FHA may provide grants for urban development, in particular the installation of utilities. Planned locations of such utility installation and associated development will likely be affected by listing of the Salt Creek tiger beetle. The FAA has jurisdiction over the Lincoln Municipal Airport, an area formerly occupied by the Salt Creek tiger beetle that may still provide suitable habitat near Capitol Beach in northern Lincoln. The NRCS and FSA administer numerous programs under The Farm Security and Rural Investment Act of 2004 (2004 Farm Bill). Although the majority of 2004 Farm Bill programs should have beneficial effects for the Salt Creek tiger beetle, certain conservation practices alter the hydrological regime of eastern Nebraska saline wetlands and associated stream habitats, and require a determination of potential effects on the Salt Creek tiger beetle.

The Act sets forth a series of general prohibitions and exceptions that apply to all endangered wildlife species. The prohibitions make it illegal for any person subject to the jurisdiction of the United States to take, import or export, transport in interstate or foreign commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any endangered species. Under section 3(19) of the Act, the term ''take'' includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect, or to attempt to engage in any such conduct. Pursuant to 50 CFR 17.3, the Service further defines ''harass'' as actions that create the likelihood of injury to listed species to such an extent as to significantly disrupt normal behavior patterns which include, but are not limited to, breeding, feeding, or sheltering. In addition, under this regulation, the Service defines ''harm'' to include significant habitat modification or destruction that results in the death or injury to listed species by significantly impairing behavior patterns such as breeding, feeding, or sheltering. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies. Permits may be issued to carry out otherwise prohibited activities involving listed species. Such permits are available for scientific purposes pursuant to section 10(a)(1)(A) of the Act, to enhance the propagation or survival of the Salt Creek tiger beetle, or for incidental take in connection with otherwise lawful activities pursuant to section 10(a)(1)(B) of the Act.

As published in the **Federal Register** on July 1, 1994, (59 FR 34271), it is the Service's policy to identify, to the maximum extent practical at the time a species is listed, those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of listing on proposed and ongoing activities within a species' range, and to assist the public in identifying measures needed to protect the species. For the Salt Creek tiger beetle, activities that we believe are unlikely to result in a violation of section 9, provided these activities are carried out in accordance with any existing regulations and permit requirements, include:

(1) Possession, delivery, or movement, including interstate transport and import into or export from the United States, of dead Salt Creek tiger beetles that were collected prior to the date of publication of the proposed rule in the **Federal Register** (February 1, 2005);

(2) Any action authorized, funded, or carried out by a Federal agency that may affect the Salt Creek tiger beetle, when the action is conducted in accordance with the consultation requirements for listed species pursuant to section 7 of the Act;

(3) Any action carried out for scientific research or to enhance the propagation or survival of the Salt Creek tiger beetle that is conducted in accordance with the conditions of a section 10(a)(1)(A) permit; and

(4) Any incidental take of the Salt Creek tiger beetle resulting from an otherwise lawful activity conducted in accordance with the conditions of an incidental take permit issued under section 10(a)(1)(B) of the Act.

Activities involving the Salt Creek tiger beetle (including all of its metamorphic or life stages) that the Service believes likely would be considered a violation of section 9 include, but are not limited to:

(1) Harassing, harming, pursuing, hunting, shooting, wounding, killing, trapping, capturing, or collecting, or attempting any of these activities, of the Salt Creek tiger beetle without a permit, except in accordance with applicable Federal and State fish and wildlife conservation laws and regulations;

(2) Possessing, selling, delivering, carrying, transporting, or shipping illegally taken Salt Creek tiger beetles or any body part thereof;

(3) Interstate and foreign commerce (commerce across State and international boundaries) and import/export (as discussed earlier in this section) without appropriate permits;

(4) Use of pesticides/herbicides that results in take of the Salt Creek tiger beetle;

(5) Release of biological control agents that take any life stage of this taxon;

(6) Discharges or dumping of toxic chemicals, silts, or other pollutants into,

or other alteration of the quality of, waters supporting Salt Creek tiger beetles that results in take of the subspecies; and

(7) Activities (*e.g.*, land leveling/clearing; grading; discing; soil compaction; soil removal; dredging; excavation; deposition of dredged or fill material; erosion and deposition of sediment/soil; stream alteration or channelization; stream bank stabilization; alteration of stream or wetland hydrology and chemistry; grazing or trampling by livestock; minerals extraction or processing; residential, commercial, or industrial developments; utilities development; off-road vehicle use; road construction; or water development and impoundment) that take eggs, larvae, sub-adult, or adult Salt Creek tiger beetles, or modify Salt Creek tiger beetle habitat in such a way that take Salt Creek tiger beetles by adversely affecting their essential behavioral patterns including breeding, foraging, sheltering, or other life functions. Otherwise lawful activities that incidentally take Salt Creek tiger beetles, but have no Federal nexus, will require a permit under section 10(a)(1)(B) of the Act.

Questions regarding whether specific activities will constitute a violation of section 9 should be directed to the Field Supervisor of the Nebraska Ecological Services Field Office (see **ADDRESSES**).

We may issue permits to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22. For endangered species, you may obtain permits for scientific purposes, to enhance the propagation or survival of the species, and for incidental take in connection with otherwise lawful activities. You may request copies of the regulations regarding listed wildlife from, and address questions about prohibitions and permits to, the U.S. Fish and Wildlife Service, Ecological Services, Endangered Species Permits, P.O. Box 25486, Denver Federal Center, Denver, Colorado 80225–0486 (telephone (303) 236–7400; facsimile (303) 236–0027).

National Environmental Policy Act

We have determined that an environmental assessment and environmental impact statement, as defined under the authority of NEPA, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act, as amended. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

Paperwork Reduction Act

This rule does not contain any new collections of information other than those already approved under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and assigned Office of Management and Budget clearance number 1018–0094, which expires on September 30, 2007. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number. For additional information concerning permit and associated requirements for endangered species, see 50 CFR 17.21 and 17.22.

References Cited

A complete list of references cited in this rule is available upon request from the Field Supervisor, U.S. Fish and Wildlife Service, Nebraska Ecological Services Field Office (see **ADDRESSES**).

Authors

The primary authors of this final rule are John Cochnar and Robert Harms, U.S. Fish and Wildlife Service, Nebraska Ecological Services Field Office (see **ADDRESSES**).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

■ Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as follows:

PART 17—[AMENDED]

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

■ 2. In § 17.11(h), add an entry for ''Beetle, Salt Creek tiger,'' in alphabetical order under INSECTS, to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*		*
INSECTS							
*	*	*	*	*	*		*
Beetle, Salt Creek tiger	*Cicindela nevadica lincolniana.*	U.S.A. (NE)	Entire	E	754	NA	NA
*	*	*	*	*	*		*

Dated: September 29, 2005.

Matt Hogan,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 05–20049 Filed 10–5–05; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 040804229–4300–02; I.D. 100305A]

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Closure of the Regular B Days-at-Sea Pilot Program

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

ACTION: Temporary rule; closure.

NMFS announces that 1,000 Regular Days-at-Sea (DAS) have been used under the Regular B DAS Pilot Program. Therefore, all Northeast (NE) multispecies DAS vessels are prohibited from using Regular B DAS under the Regular B DAS Pilot Program through the end of the current calendar quarter on October 31, 2005. The intended effect of this action is to prevent the quarterly DAS use limit of 1,000 Regular B DAS for this program from being exceeded.

DATES: Effective 0001 hr local time, October 6, 2005, through October 31, 2005. (See requirements under **SUPPLEMENTARY INFORMATION** for additional details).

FOR FURTHER INFORMATION CONTACT: Mark Grant, Fishery Management Specialist, phone (978) 281–9145, fax (978) 281–9135.

SUPPLEMENTARY INFORMATION: Regulations governing the Regular B DAS Pilot Program are found at 50 CFR 648.85(b)(6). These regulations authorize vessels issued a valid limited access NE multispecies DAS permit and allocated Regular B DAS, including vessels also issued a limited access monkfish Category C or D permit, to use a NE multispecies Regular B DAS throughout the NE multispecies regulated mesh areas outside of approved Special Access Programs under the conditions of the Regular B DAS Pilot Program. A total of 1,000 Regular B DAS may be used in this program during each calendar quarter. According to the regulations at § 648.85(b)(6)(iv)(H), once 1,000 Regular B DAS have been used during the calendar quarter, the use of Regular B DAS shall be prohibited for the duration of the current quarter. The Regular B DAS Pilot Program expires, and the current calendar quarter ends, on October 31, 2005.

Based upon available information, the Regional Administrator has determined that 1,000 Regular B DAS will be used by October 6, 2005. Therefore, effective October 6, 2005, the use of Regular B DAS under the Regular B DAS Pilot Program is prohibited through the end of the current calendar quarter and the expiration of the Regular B DAS Pilot Program on October 31, 2005. A NE multispecies DAS vessel that has already declared its intent to fish in the Georges Bank Cod Stock Area under the Regular B DAS Pilot Program through VMS, departed on a trip, and crossed the VMS demarcation line prior to the effective date of this action (i.e. October 6, 2005) must either complete its trip under a Regular B DAS by crossing the vessel monitoring system (VMS) demarcation line on its return to port, or flip to fishing under a Category A DAS, before 0000 hours local time on October 6, 2005. This is the final quarter of the Regular B DAS Program; therefore, NE multispecies vessels are no longer authorized to fish under the B DAS Pilot Program unless otherwise notified by the Regional Administrator.

Classification

This action is required by 50 CFR part 648 and is exempt from review under Executive Order 12866.

Pursuant to 5 U.S.C. 553(b)(B), the Assistant Administrator finds good cause to waive prior notice and opportunity for public comment for this action because any delay of this action would be impracticable and contrary to the public interest. The regulations at § 648.85(b)(6)(iv)(H) require the Regional Administrator to prohibit the use of Regular B DAS under the Regular B DAS Pilot Program for the remainder of the current quarter once 1,000 Regular B DAS have been used under the Regular B DAS Pilot Program. Accordingly, the action being taken by this temporary rule is non-discretionary. This action prohibits the use of Regular B DAS for the remainder of the current quarter (i.e., through October 31, 2005) to prevent the quarterly DAS use limit of 1,000 Regular B DAS for this program from being exceeded. The possibility of this closure was contemplated by Framework 40-A and commented on by the public. It is not practicable to allow for additional public comment or a delayed effectiveness because of the need to take immediate action as soon as the data are available indicating that 1,000 Regular B DAS have been used. Information regarding Regulare B DAS use in this program only recently indicated an increased rate of DAS use in this program. As a result, there has been insufficient time to provide prior notice and opportunity for public comment on this action. If implementation of this action is delayed, NMFS would be prevented from carrying out its function of preventing the quarterly limit on Regular B DAS use from being exceeded, thereby increasing the harvest of stocks of concern under the Regular B DAS Pilot Program. Opportunity for public comment would allow the use of Regular B DAS and, therefore, the harvest of stocks of concern to continue during this quarter, resulting in the likelihood of exceeding the quarterly DAS limit and the incidental catch TACs for stocks of concern. Exceeding the quarterly TAC for these species increases the chance that such additional mortality could further delay the rebuilding of these overfished stocks. Exceeding the mortality targets for these species could potentially lead to further effort restrictions in the future and, therefore, further negative economic impacts to the fishing industry. Thus, any delay caused by further opportunity for public comment would be impracticable and contrary to the public interest. For the above reasons, under 5 U.S.C. 553(b)(3), proposed rulemaking is waived because it would be impracticable and contrary to the public interest.

For the same reasons, the Assistant Administrator finds good cause, pursuant to 5 U.S.C. 553(d)(3), to waive the entire 30–day delayed effectiveness period for this action. The effect of this waiver is mitigated to some degree because the public is able to obtain information from the NMFS Northeast Regional Office website at *http://www.nero.noaa.gov* which provides catch information indicating the need for this action.

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

Dated: October 3, 2005.

Alan D. Risenhoover,

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

[FR Doc. 05–20132 Filed 10–3–05; 3:18 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register

Vol. 70, No. 193

Thursday, October 6, 2005

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–22630; Directorate Identifier 2001–NM–323–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 B4–600, B4–600R, and F4–600R Series Airplanes, and Model C4–605R Variant F Airplanes (Collectively Called A300–600 Series Airplanes); and Airbus Model A310–200 and –300 Series 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 Airbus Model A300 B4–600, B4–600R, and F4–600R series airplanes, and Model C4–605R Variant F airplanes (collectively called A300–600 series airplanes); and A310–200 and –300 series airplanes. This proposed AD would require a one-time inspection of the trimmable horizontal stabilizer actuator (THSA), corrective actions if necessary, and follow-on repetitive tasks. This proposed AD is prompted by reports of THSAs that have reached their design operational life. This operational life can be extended provided an initial inspection and follow-on repetitive tasks are accomplished. We are proposing this AD to extend the operational life of the THSA to prevent a possible failure of high-time units, which could result in reduced controllability of the airplane.

DATES: We must receive comments on this proposed AD by November 7, 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.
- By 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 service information identified in this proposed AD, contact Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France.

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

FOR FURTHER INFORMATION CONTACT: Tim Backman, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2797; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed under **ADDRESSES.** Include ''Docket No. FAA–2005–22630; Directorate Identifier 2001–NM–323–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 submitted 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 our docket 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 can review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you can visit *http://dms.dot.gov.*

Examining the Docket

You can 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 DMS receives them.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on all Airbus Model A300 B4–600, B4–600R, and F4–600R series airplanes, and Model C4–605R Variant F airplanes (collectively called A300–600 series airplanes); and Airbus Model A310–200 and –300 series airplanes. The trimmable horizontal stabilizer actuator (THSA) on those airplanes was designed for an operational life of 47,000 total flight hours. The DGAC advises that some THSAs installed on those airplanes have reached this operational limit. The DGAC has mandated an inspection and maintenance program to maintain the THSA's design reliability objective beyond its original 47,000-total-flight-hour operational life. The inspection and scheduled maintenance program of certain THSA components will allow an increase of the THSA's operational life limit, from 47,000 total flight hours to 65,000 total flight hours/40,000 total flight cycles. Failure of the THSA, if not corrected, could result in reduced controllability of the airplane.

Relevant Service Information

Airbus has issued Service Bulletins A300–27–6044, Revision 04, dated September 10, 2001 (for Model A300–600 series airplanes); and A310–27–2089, Revision 02, dated June 28, 2001

(for Model A310–200 and –300 series airplanes). These service bulletins describe procedures for inspecting the THSA, and performing corrective actions and follow-on repetitive tasks as necessary. The procedures involve:

- A detailed inspection of the THSA screw shaft thread surface for chrome plate wear and corrosion, and replacement of a worn or corroded unit with a new or serviceable (refurbished) unit.
- A detailed inspection of the THSA lower claw stop for debonding between the rubber and the inner/outer ring; measurement of the relative displacement of the inner and outer claw stop rings; and replacement, with a new stop, of any stop that has exceeded specified limits.
- A detailed inspection of the THSA fail-safe tie bar for corrosion, and replacement of any corroded fail-safe tie bar with a new or serviceable (refurbished) unit.

The repetitive tasks include:

REPETITIVE ACTIONS

Action	Repetitive interval (flight hours)
Checking for external oil leakage	1,200
Lubricating the ball screw nut	600
Checking the magnetic chip detector	2,400
Inspecting the upper and lower attachments and ball screw	2,000
Checking certain oil pumps and static torque	7,000

After a THSA is replaced with a new or serviceable THSA, there is no need to do the repetitive tasks until 47,000 flight hours after the replacement.

Accomplishment of the actions specified in the Airbus service bulletins is intended to adequately address the identified unsafe condition. The DGAC classified these service bulletins as mandatory and issued French airworthiness directive 2001–242(B), dated June 27, 2001, to ensure the continued airworthiness of these airplanes in France.

The Airbus service bulletins refer to ''Lucas Service Bulletin 47142–27–11'' as an additional source of service information for the inspections. This document is actually identified as Goodrich Actuation Systems Service Bulletin 47142–27–11 (currently at Revision 3, dated April 25, 2005).

FAA's Determination and Requirements of the Proposed AD

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

Therefore, we are proposing this AD, which would require accomplishing the actions specified in the service information described previously, except as discussed below.

Difference Between Proposed AD and Service Bulletin

The service bulletin specifies that you may contact the manufacturer for instructions on how to repair certain conditions, but this proposed AD would require you to repair those conditions using a method that we or the DGAC (or its delegated agent) approve. In light of the type of repair that would be required to address the unsafe condition, and consistent with existing bilateral airworthiness agreements, we have determined that, for this proposed AD, a repair we or the DGAC approve would be acceptable for compliance with this proposed AD.

Clarification of Inspection Type

The service bulletins do not specify the type of inspection that would be required by this proposed AD. We have determined that this inspection is a detailed inspection. Note 1 of this proposed AD defines a detailed inspection.

Costs of Compliance

The following table provides the estimated costs for U.S. operators to comply with this proposed AD.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per airplane	Number of U.S.-reg. airplanes	Fleet cost
Inspection	3	$65	None required	$195	146	$28,470.
Repetitive follow-on tasks	12	65	$0	$780, per inspection cycle.	146	$113,880, per inspection cycle.

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 FAA amends § 39.13 by adding the following new airworthiness directive (AD):

Airbus: Docket No. FAA–2005–22630; Directorate Identifier 2001–NM–323–AD.

Comments Due Date

(a) The Federal Aviation Administration must receive comments on this AD action by November 7, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all of the following Airbus airplanes, certificated in any category:

Model A300 B4–601, B4–603, B4–620, and B4–622 airplanes
Model A300 B4–605R and B4–622R airplanes
Model A300 F4–605R and F4–622R airplanes
Model A300 C4–605R Variant F airplanes
Model A310–203, –204, –221, and –222 airplanes
Model A310–304, –322, –324, and –325 airplanes

Unsafe Condition

(d) This AD was prompted by reports of trimmable horizontal stabilizer actuators (THSAs) that have reached their design operational life. We are issuing this AD to extend the operational life of the THSA to prevent a possible failure of high-time units, which could result in reduced controllability of the airplane.

Compliance

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

Service Bulletin References

(f) Unless otherwise specified in this AD, the term ''service bulletin,'' as used in this AD, means the Accomplishment Instructions of the applicable service bulletin identified in Table 1 of this AD. The service bulletins refer to Goodrich Actuation Systems Service Bulletin 47142–27–11, Revision 3, dated April 25, 2005, as an additional source of service information for the required actions.

TABLE 1.—SERVICE BULLETINS

For Airbus Model—	Use Airbus Service Bulletin—	Actions done before the effective date of this AD are also acceptable if done in accordance with Airbus Service Bulletin—
A300 B4–601, B4–603, B4–620, and B4–622 airplanes; A300 B4–605R and B4–622R airplanes; A300 F4–605R and F4–622R airplanes; and A300 C4–605R Variant F airplanes.	A300–27–6044, Revision 04, dated September 10, 2001.	A300–27–6044, Revision 02, dated August 26, 2000; or Revision 03, dated June 28, 2001.
A310–203, –204, –221, and –222 airplanes; and A310–304, –322, –324, and –325 airplanes.	A310–27–2089, Revision 02, dated June 28, 2001.	A310–27–2089, Revision 01, dated August 8, 2000.

Inspection

(g) At the applicable time specified in paragraph (g)(1) or (g)(2) of this AD, do a detailed inspection of specified components of the THSA in accordance with paragraph E.(2)(a) of the applicable service bulletin. Repair any discrepancy before further flight in accordance with a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the Direction Générale de l'Aviation Civile (DGAC) (or its delegated agent).

(1) If the flight hours accumulated on the THSA can be positively determined: Inspect before the accumulation of 47,000 total flight hours on the THSA, or within 600 flight hours after the effective date of this AD, whichever occurs later.

(2) If the flight hours accumulated on the THSA cannot be positive determined: Inspect before the accumulation of 47,000 total flight hours on the airplane, or within 600 flight hours after the effective date of this AD, whichever occurs later.

Note 1: For the purposes of this AD, a detailed inspection is: ''An intensive examination of a specific item, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at an intensity deemed appropriate. Inspection aids such as mirror, magnifying lenses, etc., may be necessary. Surface cleaning and elaborate procedures may be required.''

Follow-on Repetitive Tasks

(h) After the inspection required by paragraph (g) of this AD: Do the repetitive tasks in accordance with and at the times specified in paragraph E.(2)(b) of the service bulletin, as applicable, except as provided by paragraph (i) of this AD. The repetitive tasks are valid only until the THSA operational life exceeds the first occurring of 65,000 flight hours or 40,000 flight cycles. Before operating the THSA beyond these extended life goals, the operator must replace the THSA with a new THSA, except as provided by paragraph (i) of this AD.

THSA Replacement

(i) For any THSA, whether discrepant or not, that is replaced with a new THSA: Within 47,000 flight hours after the THSA is replaced, do the applicable tasks specified in paragraph E.(2)(a) of the applicable service bulletin. Thereafter repeat the tasks within the repetitive intervals specified in paragraph E.(2)(b) of the applicable service bulletin.

Alternative Methods of Compliance (AMOCs)

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

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

Related Information

(k) French airworthiness directive 2001–242(B), dated June 27, 2001, also addresses the subject of this AD.

Issued in Renton, Washington, on September 28, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–20063 Filed 10–5–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–22627; Directorate Identifier 2005–NM–156–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model CL–600–1A11 (CL–600), CL–600–2A12 (CL–601), and CL–600–2B16 (CL–601–3A and CL–601–3R) 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 certain Bombardier Model CL–600–1A11 (CL–600), CL–600–2A12 (CL–601), and CL–600–2B16 (CL–601–3A and CL–601–3R) airplanes. This proposed AD would require measuring to detect migration of the lower gimbal pin and inspecting for other discrepancies of the horizontal stabilizer trim actuator (HSTA). This proposed AD also would require replacing or modifying the HSTA, as applicable. This proposed AD results from reports of failure of the lower gimbal pin of the HSTA. We are proposing this AD to prevent migration of the lower gimbal pin of the HSTA, which could result in loss of the horizontal stabilizer and consequent loss of control of the airplane.

DATES: We must receive comments on this proposed AD by November 7, 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.

Contact Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centre-ville, Montreal, Quebec H3C 3G9, Canada, for service information identified in this proposed AD.

FOR FURTHER INFORMATION CONTACT: Daniel Parrillo, Aerospace Engineer, Systems and Flight Test Branch, ANE–172, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, suite 410, Westbury, New York 11590; telephone (516) 228–7305; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number ''FAA–2005–22627; Directorate Identifier 2005–NM–156–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 the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit *http://dms.dot.gov.*

Examining the Docket

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

Discussion

Transport Canada Civil Aviation (TCCA), which is the airworthiness authority for Canada, notified us that an unsafe condition may exist on certain Bombardier Model CL–600–1A11 (CL–600), CL–600–2A12 (CL–601), and CL–600–2B16 (CL–601–3A and CL–601–3R) airplanes. TCCA advises that there have been two failures of the lower gimbal pin of the horizontal stabilizer trim actuator (HSTA). In both cases, the broken pin was found during routine maintenance, and the broken pin had not migrated to the extent that operation of the HSTA was impaired. This condition, if not corrected, could result in loss of the horizontal stabilizer and consequent loss of control of the airplane.

Relevant Service Information

Bombardier has issued these service bulletins, both dated January 31, 2005:

- Bombardier Service Bulletin 600–0720 (for Model CL–600–1A11 (CL–600) airplanes).
- Bombardier Service Bulletin 601–0555 (for Bombardier Model CL–600–2A12 (CL–601), and CL–600–2B16 (CL–601–3A and CL–601–3R) airplanes).

These service bulletins describe procedures for a one-time ''special check'' of the HSTA (which the service bulletins also refer to as the ''pitch trim actuator'') for migration of the lower gimbal pin, by measuring the clearance between the yoke and the lower side of the gimbal pin head, and for other discrepancies. Discrepancies are defined in a certain chapter of the airplane maintenance manual (which is referenced in the service bulletins), and include, but are not limited to, improper engagement of the lower gimbal pin retainers, loose or missing fasteners for the pin retainers, or other damage. If the gimbal pin has migrated or any discrepancy is found, the service bulletin specifies replacing the HSTA with a new or serviceable, modified HSTA, and reporting the findings to the manufacturer. If the gimbal pin has not migrated and no discrepancy is found, the service bulletin specifies modifying the HSTA by installing the gimbal pin kit (which involves installing additional pin retainer brackets and re-identifying the HSTA) or replacing the HSTA with a new or serviceable, modified HSTA.

Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition. TCCA mandated the service information and issued Canadian airworthiness directive CF–2005–20, dated June 23, 2005, to ensure the continued airworthiness of these airplanes in Canada.

The Bombardier service bulletins refer to Goodrich Service Bulletin 21207–00X–27–05, dated January 31, 2005, as an additional source of service information for doing the modification of the HSTA.

FAA's Determination and Requirements of the Proposed AD

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

Therefore, we are proposing this AD, which would require accomplishing the actions specified in the service information described previously. The proposed AD would also require sending the inspection results to the manufacturer if the gimbal pin is found migrated. These inspection reports will help to determine the extent of migrated gimbal pins within the affected fleet. (While TCCA has received reports of broken lower gimbal pins, there have been no reports of migrated pins.) However, if migrated pins are found during the inspections that would be required by this proposed AD, this may indicate that further action is warranted.

Clarification of Inspection Terminology

The Canadian airworthiness directive and Bombardier service bulletins specify performing a ''special check'' of the HSTA for migration of the lower gimbal pin, by measuring the clearance between the yoke and the lower side of the gimbal pin head. The Bombardier service bulletins also specify to look for damage during this special check. For clarification, in this proposed AD, we refer to this check as a measurement (of the clearance between the yoke and the lower side of the gimbal pin head on the HSTA) to detect migration of the lower gimbal pin of the HSTA, and a detailed inspection for other discrepancies of the HSTA. We have included a note defining ''detailed inspection.''

Costs of Compliance

This proposed AD would affect about 269 airplanes of U.S. registry. The proposed measurement/inspection and modification would take about 5 work hours per airplane, at an average labor rate of $65 per work hour. Required parts would cost about $462 per airplane. Based on these figures, the estimated cost of the proposed AD for U.S. operators is $211,703, or $787 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 and placed it in the AD docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, 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):

Bombardier, Inc. (Formerly Canadair): Docket No. FAA–2005–22627; Directorate Identifier 2005–NM–156–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by November 7, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to the Bombardier airplanes identified in Table 1 of this AD, certificated in any category.

TABLE 1.—APPLICABILITY

Bombardier airplane models	Serial Nos.
CL–600–1A11 (CL–600)	1004 through 1085 inclusive.
CL–600–2A12 (CL–601)	3001 through 3066 inclusive.
CL–600–2B16 (CL–601–3A and CL–601–3R)	5001 through 5194 inclusive.

Unsafe Condition

(d) This AD results from reports of failure of the lower gimbal pin of the horizontal stabilizer trim actuator (HSTA). We are issuing this AD to prevent migration of the lower gimbal pin of the HSTA, which could result in loss of the horizontal stabilizer and consequent loss of control of the airplane.

Compliance

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

Service Bulletin Reference

(f) The term ''service bulletin,'' as used in this AD, means the Accomplishment

Instructions of the service bulletins identified in paragraphs (f)(1) and (f)(2) of this AD, as applicable.

(1) For Model CL–600–1A11 (CL–600) airplanes: Bombardier Service Bulletin 600–0720, dated January 31, 2005.

(2) For Bombardier Model CL–600–2A12 (CL–601), and CL–600–2B16 (CL–601–3A and CL–601–3R) airplanes: Bombardier Service Bulletin 601–0555, dated January 31, 2005.

Note 1: The Bombardier service bulletins identified in paragraphs (f)(1) and (f)(2) of this AD refer to Goodrich Service Bulletin 21207–00X–27–05, dated January 31, 2005, as an additional source of service information for doing the modification of the HSTA.

Measurement and Modification or Replacement

(g) Within 600 flight hours or 16 months after the effective date of this AD, whichever is first: Measure the clearance between the yoke and the lower side of the gimbal pin head on the HSTA to detect migration of the lower gimbal pin of the HSTA, and do a detailed inspection to detect discrepancies of the HSTA, in accordance with the service bulletin.

(1) If the lower gimbal pin has not migrated and no discrepancy is found: Modify the HSTA by installing the gimbal pin kit, or replace the existing HSTA with a new or serviceable, modified HSTA, in accordance with the service bulletin.

(2) If the lower gimbal pin has migrated or any discrepancy is found: Before further flight, replace the HSTA with a new or serviceable, modified HSTA, in accordance with the service bulletin.

Note 2: For the purposes of this AD, a detailed inspection is: ''An intensive examination of a specific item, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at an intensity deemed appropriate. Inspection aids such as mirror, magnifying lenses, etc., may be necessary. Surface cleaning and elaborate procedures may be required.''

Reporting

(h) If any gimbal pin is found migrated: Submit a report of the findings (migrated pins only) of the measurement and inspections required by paragraph (g) of this AD to Bombardier, Attention Dept. Customer Support Program Office (CSPO), fax (514) 855'8798. Submit the report at the applicable time specified in paragraph (h)(1) or (h)(2) of this AD. The report must include the airplane serial number, the HSTA part number and serial number, the results of the inspection, and the action taken. Submitting the Service Bulletin Feedback Form of the applicable service bulletin is an acceptable means of complying with this requirement. Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements contained in this AD and has assigned OMB Control Number 2120–0056.

(1) If the measurement was done after the effective date of this AD: Submit the report within 30 days after the inspection.

(2) If the measurement was done prior to the effective date of this AD: Submit the report within 30 days after the effective date of this AD.

Parts Installation

(i) As of the effective date of this AD, no person may install an HSTA on any airplane unless the actions required by paragraph (g) of this AD are accomplished on it.

Alternative Methods of Compliance (AMOCs)

(j)(1) The Manager, New York 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.

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

Related Information

(k) Canadian airworthiness directive CF–2005–20, dated June 23, 2005, also addresses the subject of this AD.

Issued in Renton, Washington, on September 28, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–20065 Filed 10–5–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–78–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 777 Series Airplanes Equipped With Pratt & Whitney Engines and Used in Extended Range Twin-Engine Operations (ETOPS)

AGENCY: Federal Aviation Administration, DOT.

ACTION: Proposed rule; withdrawal.

SUMMARY: This action withdraws a notice of proposed rulemaking (NPRM) that proposed a new airworthiness directive (AD), applicable to certain Boeing Model 777 series airplanes equipped with Pratt & Whitney engines. That action would have required replacement of the integrated drive generator (IDG) and the backup generator with a new IDG and a new backup generator. Since the issuance of the NPRM, the Federal Aviation Administration (FAA) has received new data that indicate that all affected airplanes worldwide have the proper parts installed and all spares are accounted for, and that the identified unsafe condition (loss of electrical power) cannot occur for the reasons specified by the NPRM. Accordingly, the proposed rule is withdrawn.

FOR FURTHER INFORMATION CONTACT: Tony Castillos, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office; 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2864; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add a new airworthiness directive (AD), applicable to certain Boeing Model 777 series airplanes equipped with Pratt & Whitney engines, was published in the **Federal Register** as a Notice of Proposed Rulemaking (NPRM) on January 5, 1998 (63 FR 169). The proposed rule would have required replacement of the integrated drive generator (IDG) and the backup generator with a new IDG and a new backup generator. That action was prompted by reports of IDG shaft failure resulting from design problems in the hydraulic and mechanical systems of the generator, and by reports of backup generator failure resulting from the failure of the oil pressure switch. The proposed actions were intended to prevent continued degradation of the power system, and consequent loss of electrical power.

Actions That Occurred Since the NPRM Was Issued

Since the issuance of that NPRM, the FAA has received and confirmed reports indicating that all affected airplanes worldwide have the proper parts installed and that all spares are accounted for.

FAA's Conclusions

Upon further consideration, the FAA has determined that the unsafe condition identified in the NPRM (loss of electrical power) can no longer occur because of the reasons given in the NPRM. Accordingly, the proposed rule is hereby withdrawn.

Withdrawal of this NPRM constitutes only such action, and does not preclude the agency from issuing another action in the future, nor does it commit the agency to any course of action in the future.

Regulatory Impact

Since this action only withdraws a notice of proposed rulemaking, it is neither a proposed nor a final rule and therefore is not covered under Executive

Order 12866, the Regulatory Flexibility Act, or DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979).

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Withdrawal

Accordingly, the notice of proposed rulemaking, Docket 97–NM–78–AD, published in the **Federal Register** on January 5, 1998 (63 FR 169), is withdrawn.

Issued in Renton, Washington, on September 29, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–20076 Filed 10–5–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–22629; Directorate Identifier 2005–NM–089–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–200, –300, –400, and –500 Series 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 certain Boeing Model 737–200, –300, –400, and –500 series airplanes. This proposed AD would require a one-time inspection of frames between station 360 and station 907 to determine if a subject support bracket for the air conditioning outlet extrusion is installed, and related repetitive investigative actions and repair if necessary. This proposed AD also provides an optional preventive modification that would end the repetitive investigative actions. This proposed AD would also require a one-time post-modification/repair inspection for cracking of each repaired/modified frame. This proposed AD results from numerous reports indicating that frame cracks have been found at the attachment holes for support brackets for the air conditioning outlet extrusion. We are proposing this AD to detect and correct such cracking, which, if the cracking were to continue to grow, could result in a severed frame. A severed frame, combined with existing multi-site damage at the stringer 10 lap splice, could result in rapid decompression of the airplane.

DATES: We must receive comments on this proposed AD by November 21, 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.

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

FOR FURTHER INFORMATION CONTACT: Sue Lucier, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6438; 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–2005–22629; Directorate Identifier 2005–NM–089–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

We have received numerous reports indicating that frame cracks have been found at the attachment holes for support brackets for the air conditioning outlet extrusion on Boeing Model 737–200, –300, –400, and –500 series airplanes. The subject support brackets have a certain part number and are attached to the frame with two rivets. Subject support brackets may be installed on frames between station 360 and station 907. Investigation has revealed that the frame cracks occur due to fatigue and grow in a circumferential direction. The circumferential growth of the cracks is not likely to lead to a severed frame; however, with continued fatigue cycling, a crack could potentially turn in a direction that would lead to a severed frame. Also, frame cracks have been found on multiple adjacent frames, and at the lower row of fasteners of the stringer 10 lap joint, which is susceptible to multi-site damage. Therefore, frame cracks at the attachment holes for the support bracket of the air conditioning outlet extrusion, if not corrected, could eventually lead to a severed frame, which, combined with existing multi-site damage at the stringer 10 lap splice, could result in rapid decompression of the airplane.

Relevant Service Information

We have reviewed Boeing Special Attention Service Bulletin 737–53–1216, dated January 27, 2005. Part I of the service bulletin describes procedures for a general visual inspection to identify where subject support brackets (defined previously) may be installed on frames between station 360 and station 907. Part I of the

service bulletin also describes procedures for related investigative actions following identification of subject support brackets. The related investigative actions consist of a medium-frequency eddy current (MFEC) inspection for cracking of the frame around the attachment rivets of the support bracket, and a high-frequency eddy current (HFEC) inspection for cracking of the frame adjacent to the inboard fastener hole.

For any subject support bracket on which no cracking is found, the service bulletin specifies to perform these inspections repetitively, or to do a preventive modification. Part II of the service bulletin describes procedures for the preventive modification, which involves performing an open-hole HFEC inspection of the frame holes for the support bracket, and repairing any cracks in accordance with the repair procedures (in Part III of the service bulletin). If no crack is found during the inspection of the frame holes, the modification procedures involve installing a doubler and cold-working fastener holes, as applicable.

For any subject frame on which cracking is found, Part III of the service bulletin specifies procedures for repair. The repair involves cutting out the frame web, doing a dye penetrant or HFEC inspection of the cutout to ensure it is free from cracks, installing repair angles, and cold working fastener holes as applicable.

Part IV of the service bulletin describes procedures for performing a one-time post-repair/modification inspection of any modified or repaired frame, which involves the following:

- Performing a detailed inspection for cracking of the modification doubler or repair angle, as applicable.
- Performing a detailed inspection for cracking of the frame, two stringers above and two stringers below the support bracket.
- Performing a detailed inspection for cracking of the air conditioning attach brackets.
- Performing a detailed inspection for cracking of the frame at the stringer clips.
- Reporting any cracking to Boeing.

Accomplishing the general visual inspection, repetitive MFEC and HFEC inspections, and any necessary corrective actions specified in the service information is intended to adequately address the unsafe condition.

Section 1.E., Compliance, of the service bulletin specifies compliance times for the actions in the service bulletin. The service bulletin specifies that the initial general visual, MFEC, and HFEC inspections, as applicable, are required prior to the accumulation of 30,000 total flight cycles, or within 5,000 flight cycles after the date of the service bulletin (or after a frame repair was made), whichever occurs later. The service bulletin specifies a repetitive interval (for all subject frames) of 6,000 flight cycles.

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 require accomplishing the actions specified in the service information described previously, except as discussed under ''Differences Between the Proposed AD and Service Information.'' If no cracking is found, this proposed AD would also provide for optional accomplishment of the preventive modification, which would end the repetitive inspections for each modified frame.

Consistent with the service information, the proposed AD would allow repetitive inspections to continue in lieu of the preventive modification for any frame on which no cracking is found. In making this determination, we considered that long-term continued operational safety in this case will be adequately ensured by repetitive inspections to detect cracking before it represents a hazard to the airplane.

Differences Between the Proposed AD and Service Information

Part IV of the Accomplishment Instructions of the referenced service bulletin does not specify what corrective action is necessary if cracking is found during a post-modification/repair inspection. We find that any cracking found during a post-modification/repair inspection must be repaired in one of the following ways:

- Using a method that we approve; or
- Using data that meet the certification basis of the airplane, and that have been approved by an Authorized Representative for the Boeing Commercial Airplanes Delegation Option Authorization Organization whom we have authorized to make those findings.

Also, Part IV of the Accomplishment Instructions of the referenced service bulletin specifies reporting to Boeing any damage found during the post-modification/repair inspections. This proposed AD would not require that action. We do not need this information from operators.

The service bulletin specifies a compliance time relative to the date of the service bulletin; however, this proposed AD would require compliance before the specified compliance time after the effective date of this AD.

Costs of Compliance

There are about 2,131 airplanes of the affected design in the worldwide fleet. This proposed AD would affect about 938 airplanes of U.S. registry. The proposed inspection to identify subject support brackets, and subsequent MFEC and HFEC inspections would take about 2 work hours per frame, with approximately 32 to 45 frames to be inspected 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 between $3,902,080 and $5,487,300, or between $4,160 and $5,850 per airplane.

The following table provides the estimated costs for U.S. operators to comply with the inspections of each frame for cracking, the preventive modification, and the repair specified in this proposed AD, at an average labor rate of $65 per work hour. Note that the estimated cost specified in the table is per frame, not per airplane, as it is unknown how many frames on each airplane will have a subject bracket installed.

ESTIMATED ON-CONDITION COSTS

Action	Work hours	Parts	Cost per frame
Preventive modification	4	Operator-provided	$260
Repair	6	$608	998

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 and placed it in the AD docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, 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–2005–22629; Directorate Identifier 2005–NM–089–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by November 21, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Boeing Model 737–200, –300, –400, and –500 series airplanes; certificated in any category; as identified in Boeing Special Attention Service Bulletin 737–53–1216, dated January 27, 2005.

Unsafe Condition

(d) This AD results from numerous reports indicating that frame cracks have been found at the attachment holes for support brackets for the air conditioning outlet extrusion. We are issuing this AD to detect and correct such cracking, which, if the cracking were to continue to grow, could result in a severed frame. A severed frame, combined with existing multi-site damage at the stringer 10 lap splice, could result in rapid decompression of the airplane.

Compliance

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

Inspection To Determine Subject Support Brackets

(f) Perform a one-time general visual inspection to identify subject support brackets for the air conditioning outlet extrusion installed on frames between station 360 and station 907, in accordance with Part I of the Accomplishment Instructions of Boeing Special Attention Service Bulletin 737–53–1216, dated January 27, 2005. Subject support brackets have part number 65C27021–() and are attached to the frame with two rivets. Do this inspection at the applicable time specified in paragraph 1.E., ''Compliance,'' of the service bulletin, except, where the service bulletin specifies a compliance time after the issuance of the service bulletin, this AD requires compliance within the specified compliance time after the effective date of this AD.

Repetitive Inspections for Cracking

(g) For each frame with a subject support bracket identified during the inspection in accordance with paragraph (f) of this AD: Perform a medium-frequency eddy current inspection for cracking of the frame around the attachment rivets of the support bracket, and a high-frequency eddy current (HFEC) inspection for cracking of the frame adjacent to the inboard fastener hole, by doing all the actions specified in and in accordance with Part I of the Accomplishment Instructions of Boeing Special Attention Service Bulletin 737–53–1216, dated January 27, 2005, except for paragraph 3.B.2. of Part I (which was already done in accordance with paragraph (f) of this AD). Do the initial inspections at the applicable time specified in paragraph 1.E., ''Compliance,'' of the service bulletin, except, where the service bulletin specifies a compliance time after the issuance of the service bulletin, this AD requires compliance within the specified compliance time after the effective date of this AD. If no cracking is found, repeat the inspections thereafter at intervals not to exceed the repeat interval specified in paragraph 1.E., ''Compliance,'' of the service bulletin, until paragraph (h) or (i) of this AD is done.

Repair

(h) For any frame in which cracking is found during any inspection required by paragraph (g) of this AD: Before further flight, repair the cracking by doing all applicable actions in accordance with Part III of the Accomplishment Instructions of Boeing Special Attention Service Bulletin 737–53–1216, dated January 27, 2005. Then, do paragraph (j) of this AD, at the time specified in that paragraph. Doing this repair ends the repetitive inspections required by paragraph (g) of this AD for each modified frame.

Optional Preventive Modification

(i) For any frame on which a subject bracket is installed: Doing all actions associated with the preventive modification in accordance with Part II of the Accomplishment Instructions of Boeing Special Attention Service Bulletin 737–53–1216, dated January 27, 2005, ends the repetitive inspections required by paragraph (g) of this AD for each modified frame. Do the requirements of paragraph (j) of this AD on each modified frame at the time specified in that paragraph.

Post-Modification/Repair Inspection

(j) For each frame repaired or modified in accordance with paragraph (h) or (i) of this AD, as applicable: Within 24,000 flight cycles after doing the modification/repair, but after a minimum of 18,000 flight cycles after doing the modification/repair, do one-time detailed inspections for cracking of the repaired/modified frame, air conditioning attach brackets, and stringer clips, by doing all actions in accordance with Part IV of the Accomplishment Instructions of Boeing Special Attention Service Bulletin 737–53–1216, dated January 27, 2005. If any cracking is found during the post-modification/repair inspection, before further flight, repair the cracking using a method approved in accordance with paragraph (k) of this AD.

Alternative Methods of Compliance (AMOCs)

(k)(1) The Manager, Seattle ACO, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD, if it is approved by an Authorized Representative for the Boeing Commercial Airplanes Delegation Option Authorization Organization who has been

authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

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

Issued in Renton, Washington, on September 28, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–20077 Filed 10–5–05; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[R01–OAR–2005–MA–0002; FRL–7981–6]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants: Massachusetts; Negative Declaration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the Sections 111(d) and 129 negative declaration submitted by the Massachusetts Department of Environmental Protection (MADEP) on August 23, 2005. This negative declaration adequately certifies that there are no existing hospital/medical/infectious waste incinerators (HMIWIs) located within the boundaries of the Commonwealth of Massachusetts.

DATES: EPA must receive comments in writing by November 7, 2005.

ADDRESSES: Submit your comments, identified by Regional Material in EDocket (RME) ID Number R01–OAR–2005–MA–0002 by one of the following methods:

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

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

3. E-mail: *brown.dan@epa.gov*.

4. Fax: (617) 918–0048.

5. Mail: ''RME ID Number R01–OAR–2005–MA–0002'', Daniel Brown, Chief, Air Permits, Toxics & Indoor Programs Unit, Office of Ecosystem Protection, U.S. EPA, One Congress Street, Suite 1100 (CAP), Boston, Massachusetts 02114–2023.

6. Hand Delivery or Courier. Deliver your comments to: Daniel Brown, Chief, Air Permits, Toxics & Indoor Programs Unit, Office of Ecosystem Protection, U.S. EPA, One Congress Street, Suite 1100 (CAP), Boston, Massachusetts 02114–2023. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding Federal holidays.

Please see the direct final rule which is located in the Rules Section of this **Federal Register** for detailed instructions on how to submit comments.

Copies of documents relating to this proposed rule are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the day of the visit.

Environmental Protection Agency, Air Permits, Toxics & Indoor Programs Unit, Office of Ecosystem Protection, Suite 1100 (CAP), One Congress Street, Boston, Massachusetts 02114–2023.

Massachusetts Department of Environmental Protection, Business Compliance Division, One Winter Street, Boston, Massachusetts 04333–0017, (617) 292–5500.

FOR FURTHER INFORMATION CONTACT: John Courcier, Office of Ecosystem Protection (CAP), EPA–New England, Region 1, Boston, Massachusetts 02203, telephone number (617) 918–1659, fax number (617) 918–0659, e-mail *courcier.john@epa.gov*.

SUPPLEMENTARY INFORMATION: In the Final Rules section of this **Federal Register**, EPA is approving the Massachusetts Negative Declaration submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. For additional information, see the direct final rule which is located in the Rules section of this **Federal Register**.

Dated: September 20, 2005.

Robert W. Varney,

Regional Administrator, EPA New England.

[FR Doc. 05–20107 Filed 10–5–05; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AT75

Endangered and Threatened Wildlife and Plants; Proposed Designation of Critical Habitat for *Brodiaea filifolia* (Thread-Leaved Brodiaea)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of public comment period and notice of availability of draft economic analysis.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the reopening of the public comment period on the proposed designation of critical habitat for *Brodiaea filifolia*, and the availability of a draft economic analysis of the proposed designation of critical habitat. We are reopening the comment period to allow all interested parties an opportunity to comment simultaneously on the proposed rule and the associated draft economic analysis. Comments previously submitted on this proposed rule need not be resubmitted as they have already been incorporated into the public record and will be fully considered in our final determination.

DATES: We will accept public comments and information until October 20, 2005.

ADDRESSES: Written comments and materials may be submitted to us by any one of the following methods:

1. You may submit written comments and information to Jim Bartel, Field Supervisor, Carlsbad Fish and Wildlife Office, 6010 Hidden Valley Road, Carlsbad, CA 92011;

2. You may hand-deliver written comments and information to our Carlsbad Fish and Wildlife Office at the above address, or fax your comments to 760/431–9624; or

3. You may send your comments by electronic mail (e-mail) to *fw1cfwo_brfi@fws.gov.* For directions on how to submit electronic comments, see the ''Public Comments Solicited'' section. In the event that our Internet connection is not functional, please submit your comments by the alternate methods mentioned above.

You may obtain copies of the proposed rule and draft economic analysis by mail or by visiting our Web site at *http://carlsbad.fws.gov.* You may review comments and materials received and review supporting documentation used in preparation of this proposed rule by appointment, during normal business hours, at the Carlsbad Fish and Wildlife Field Office (address provided above).

FOR FURTHER INFORMATION CONTACT: Jim Bartel, Field Supervisor, Carlsbad Fish and Wildlife Office, at the above address (telephone 760/431–9440; facsimile 760/431–9624).

SUPPLEMENTARY INFORMATION: Public Comments Solicited

We will accept written comments and information during this reopened comment period. We solicit comments on the original proposed critical habitat designation, published in the **Federal Register** on December 8, 2004 (69 FR 71284), and on our draft economic analysis of the proposed designation. We will consider information and recommendations from all interested parties. We are particularly interested in comments concerning:

(1) The reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (Act), including whether the benefits of exclusion outweigh the benefits of specifying such area as part of the critical habitat;

(2) Specific information on the amount and distribution of *Brodiaea filifolia* and its habitat, and which habitat features and geographic areas are essential to the conservation of this species and why;

(3) Land use designations and current or planned activities in the subject areas and their possible impacts on proposed critical habitat;

(4) Information on how many of the State and local environmental protection measures referenced in the draft economic analysis were adopted largely as a result of the listing of *Brodiaea filifolia*, and how many were either already in place or enacted for other reasons;

(5) Any foreseeable economic, environmental, or other impacts resulting from the proposed designation or coextensively from other related factors;

(6) Any foreseeable economic, environmental, or other benefits resulting from the proposed designation, or coextensive from other related factors;

(7) Whether the draft economic analysis identifies all State and local costs attributable to the proposed critical habitat designation, and information on any costs that have been inadvertently overlooked;

(8) Whether the draft economic analysis makes appropriate assumptions regarding current practices and likely regulatory changes imposed as a result of the designation of critical habitat;

(9) Whether the draft economic analysis correctly assesses the effect on regional costs associated with land use controls that derive from the designation of critical habitat;

(10) Whether the economic analysis appropriately identifies all costs that could result from the designation, in particular, any impacts on small entities or families;

(11) Whether the designation would result in disproportionate economic impacts to specific areas that should be evaluated for possible exclusion under 4(b)(2) of the Act from the final designation;

(12) Whether it is appropriate that the analysis does not include the costs of project modification that are the result of informal consultation only;

(13) Whether there is information about areas that could be used as substitutes for the economic activities planned in critical habitat areas that would offset the costs and allow for the conservation of critical habitat areas;

(14) How our approach to critical habitat designation could be improved or modified to provide for greater public participation and understanding, or to assist us in accommodating public concern and comments; and

(15) Whether we should consider the exclusion of critical habitat within the municipalities that have a disproportionate number of small entities that could potentially be impacted, such as San Dimas, San Juan Capistrano, or San Bernardino.

All previous comments and information submitted during the initial comment period on the proposed rule need not be resubmitted. If you wish to comment, you may submit your comments and materials concerning the draft economic analysis and the proposed rule by any one of several methods (see **ADDRESSES** section). Our final determination regarding designation of critical habitat for *Brodiaea filifolia* will take into consideration all comments and any additional information received during both comment periods. On the basis of public comment on this analysis and on the critical habitat proposal, and on the final economic analysis, we may during the development of our final determination find that areas proposed are not essential, are appropriate for exclusion under section 4(b)(2) of the Act, or are not appropriate for exclusion.

Please submit electronic comments in an ASCII file and avoid the use of any special characters or any form of encryption. Also, please include ''Attn: *Brodiaea filifolia*'' and your name and return address in your e-mail message regarding the *Brodiaea filifolia* proposed rule or the draft economic analysis. If you do not receive a confirmation from the system that we have received your e-mail message, please submit your comments in writing using one of the alternate methods described in the **ADDRESSES** section.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comments. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Comments and materials received, as well as supporting documentation used in preparation of the proposal to designate critical habitat, will be available for public inspection, by appointment, during normal business hours at the Carlsbad Fish and Wildlife Office at the address listed under **ADDRESSES.** Copies of the proposed critical habitat rule for *Brodiaea filifolia* and the draft economic analysis are also available on the Internet at *http://www.fws.gov/pacific/carlsbad/BRFI.htm.* In the event that our internet connection is not functional, please obtain copies of documents directly

from the Carlsbad Fish and Wildlife Office.

Background

On December 8, 2004, we published a proposed rule in the **Federal Register** (69 FR 71284) to designate critical habitat for *Brodiaea filifolia* pursuant to the Act. We proposed to designate a total of approximately 4,690 acres (ac) (1,898 hectares (ha)) of critical habitat in Los Angeles, San Bernardino, Orange, and San Diego counties, California. The first comment period for the *Brodiaea filifolia* proposed critical habitat rule closed on February 7, 2005. For more information on this species, refer to the final rule listing this species as threatened, published in the **Federal Register** on October 13, 1998 (63 FR 54975).

Critical habitat is defined in section 3 of the Act as the specific areas within the geographic area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features essential to the conservation of the species and that may require special management considerations or protection, and specific areas outside the geographic area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. If the proposed rule is made final, section 7 of the Act will prohibit destruction or adverse modification of critical habitat by any activity funded, authorized, or carried out by any Federal agency. Federal agencies proposing actions affecting areas designated as critical habitat must consult with us on the effects of their proposed actions, pursuant to section 7(a)(2) of the Act.

Section 4(b)(2) of the Act requires that we designate or revise critical habitat on the basis of the best scientific and commercial data available, after taking into consideration the economic impact, impact to national security, and any other relevant impacts of specifying any particular area as critical habitat. We have prepared a draft economic analysis of the December 8, 2004 (69 FR 71284), proposed designation of critical habitat for *Brodiaea filifolia.*

The draft economic analysis considers the potential economic effects of actions relating to the conservation of *Brodiaea filifolia,* including costs associated with sections 4, 7, and 10 of the Act, and including those attributable to designating critical habitat. It further considers the economic effects of protective measures taken as a result of other Federal, State, and local laws that aid habitat conservation for *Brodiaea filifolia* in habitat areas with features essential to the conservation of this taxon. The analysis considers both economic efficiency and distributional effects. In the case of habitat conservation, efficiency effects generally reflect the ''opportunity costs'' associated with the commitment of resources to comply with habitat protection measures (*e.g.*, lost economic opportunities associated with restrictions on land use). This analysis also addresses how potential economic impacts are likely to be distributed, including an assessment of any local or regional impacts of habitat conservation and the potential effects of conservation activities on small entities and the energy industry. This information can be used by decision-makers to assess whether the effects of the designation might unduly burden a particular group or economic sector. Finally, this analysis looks retrospectively at costs that have been incurred since the date the species was listed as an endangered species and considers those costs that may occur in the 20 years following the designation of critical habitat.

This analysis determined that costs involving conservation measures for *Brodiaea filifolia* would be incurred for activities involving residential, industrial, and commercial development; water supply; flood control; transportation; agriculture; the development of HCPs; and the management of military bases, other Federal lands, and other public or conservation lands.

Pre-designation costs include those *Brodiaea filifolia*-related conservation activities associated with sections 4, 7, and 10 of the Act that have accrued since the time that *Brodiaea filifolia* was listed as threatened (63 FR 54975; October 13, 1998), but prior to the final designation of critical habitat. The total pre-designation costs associated with critical habitat proposed for inclusion are estimated to be $2.9 million to $3.0 million on a present value basis and $2.4 to $2.5 million expressed in undiscounted dollars. Pre-designation costs associated with areas excluded from the proposed designation are estimated to be $110,000 to $180,000 on a present value basis and $100,000 to $150,000 expressed in undiscounted dollars.

Post-designation effects would include likely future costs associated with *Brodiaea filifolia* conservation efforts in the 20-year period following the final designation of critical habitat in December 2005 (effectively 2005 through 2024). If critical habitat is designated as proposed, total costs are estimated to be $12.2 million to $14.7 million on a present value basis and $12.2 to $16.9 million expressed in undiscounted dollars (an annualized cost of $0.6 to $0.8 million annually). However, if all habitat with features essential to the conservation of the taxon were designated critical habitat in a final rule, total costs would be expected to range between $24.5 and $43.6 million over the next 20 years (an annualized cost of $1.2 to $2.2 million).

Required Determinations

Regulatory Planning and Review

In accordance with Executive Order 12866, this document is a significant rule in that it may raise novel legal and policy issues. However, because the draft economic analysis indicates the potential economic impact associated with a designation of all habitat with features essential to the conservation of this species would total no more than $2.2 million per year, we do not anticipate that this rule would have an annual effect on the economy of $100 million or more or affect the economy in a material way. Due to the time line for publication in the **Federal Register**, the Office of Management and Budget (OMB) did not formally review the proposed rule.

Executive Order 12866 directs Federal Agencies promulgating regulations to evaluate regulatory alternatives (Office of Management and Budget, Circular A–4, September 17, 2003). Pursuant to Circular A–4, once it has been determined that the Federal regulatory action is appropriate, then the agency will need to consider alternative regulatory approaches. Since the determination of critical habitat is a statutory requirement pursuant to the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), we must then evaluate alternative regulatory approaches, where feasible, when promulgating a designation of critical habitat.

In developing our designations of critical habitat, we consider economic impacts, impacts to national security, and other relevant impacts pursuant to section 4(b)(2) of the Act. Based on the discretion allowable under this provision, we may exclude any particular area from the designation of critical habitat providing that the benefits of such exclusion outweighs the benefits of specifying the area as critical habitat and that such exclusion would not result in the extinction of the species. As such, we believe that the evaluation of the inclusion or exclusion of particular areas, or combination thereof, in a designation constitutes our regulatory alternative analysis.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (*i.e.*, small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. In our proposed rule, we withheld our determination of whether this designation would result in a significant effect as defined under SBREFA until we completed our draft economic analysis of the proposed designation so that we would have the factual basis for our determination.

According to the Small Business Administration (SBA), small entities include small organizations, such as independent nonprofit organizations, and small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents, as well as small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we considered the types of activities that might trigger regulatory impacts under this designation as well as types of project modifications that may result. In general, the term significant economic impact is meant to apply to a typical small business firm's business operations.

To determine if this proposed designation of critical habitat for *Brodiaea filifolia* would affect a substantial number of small entities, we considered the number of small entities affected within particular types of economic activities (*e.g.*, residential, industrial, and commercial development). We considered each industry or category individually to determine if certification is appropriate. In estimating the numbers of small entities potentially affected, we also considered whether their activities have any Federal involvement; some kinds of activities are unlikely to have any Federal involvement and so will not be affected by the designation of critical habitat. Designation of critical habitat only affects activities conducted, funded, permitted, or authorized by Federal agencies; non-Federal activities are not affected by the designation.

If this proposed critical habitat designation is made final, Federal agencies must consult with us if their activities may affect designated critical habitat. Consultations to avoid the destruction or adverse modification of critical habitat would be incorporated into the existing consultation process. Our analysis determined that costs involving conservation measures for *Brodiaea filifolia* would be incurred for activities involving residential, industrial, and commercial development; water supply; flood control; transportation; agriculture; the development of HCPs; and the management of military bases, other Federal lands, and other public or conservation lands.

In our economic analysis of this proposed designation, we evaluated the potential economic effects on small business entities resulting from conservation actions related to the listing of this species and proposed designation of its critical habitat. Critical habitat designation is expected to result in additional costs to real estate development projects due to mitigation and other conservation costs that may be required. The affected land is located within Los Angeles, San Bernardino, Orange, Riverside, and San Diego counties and under private ownership by individuals who will either undertake a development project on their own or sell the land to developers for development. For businesses involved with land development, the relevant threshold for ''small'' is annual revenues of $6 million or less. The North American Industry Classification System (NAICS) code 237210 is comprised of establishments primarily engaged in servicing land (*e.g.*, excavation, installing roads and utilities) and subdividing real property into lots for subsequent sale to builders. Land subdivision precedes actual construction, and typically includes residential properties, but may also include industrial and commercial properties.

The Draft Economic Analysis (See Section 3.2.1) estimates that 390 acres within proposed critical habitat are projected to be developed over the next 20 years. The analysis assumes that as a result of *Brodiaea filifolia* conservation activities, 95 percent of the acres are conserved, and the plant is salvaged from the remaining five percent. As a result, landowners of 100 percent of these acres bear costs of *B. filifolia* conservation activities.

To estimate the number of landowners potentially impacted by *Brodiaea filifolia* conservation activities, the analysis estimates the average parcel size within essential habitat units in each county that contains essential habitat and compares it to the estimate of affected acres in these areas. At the aggregate county level, in units proposed for inclusion, one individual may be impacted in Los Angeles County, one individual may be impacted in San Bernardino County, 22 individuals may be impacted in Orange County, and 27 individuals may be impacted in San Diego County. Note that this estimate may be understated if habitat partially overlaps several parcels or overstated if one person owns more than one parcel with *B. filifolia.*

The loss in land value experienced by an individual landowner will depend on how much of a parcel is inhabited by *Brodiaea filifolia,* the extent to which development activities can be planned around sensitive areas, and the existence of alternative uses of the property that do not threaten the plant or its habitat. For example, if *B. filifolia* exists on only a small portion of the parcel that can be incorporated into existing open space requirements, then a small percentage of the land value is lost. However, if *B. filifolia* is found throughout the parcel, most or all of development value of that parcel may be lost. In such a circumstance, the parcel may continue to derive value from other, nondevelopment-oriented uses.

Effects on Homebuyers and Small Construction Firms

The Draft Economic Analysis (DEA) (See Section 3.2.2) estimates a potential shift in the supply of housing resulting from increased land scarcity. Scenario Two assumes that as a result of on-site conservation requirements, less land is available for development, and therefore fewer new homes are built. Under this scenario, small construction firms may be indirectly affected. This analysis uses a methodology used by Charles River Associates (CRA) to estimate the potential impact to small construction firms. The analysis uses the following steps to estimate the number of firms potentially affected:

(1) The analysis estimates the number of new homes typically built by a small

construction firm in one year. Average annual revenues for a small construction firm are $694,000. Using the average construction costs for a single family home of $236,000 obtained from CRA's vernal pool analysis, a small firm is assumed to build on average three houses a year ($694,000/$236,000 = 2.9).

(2) Next, the analysis estimates the number of homes that would have been built by small businesses in the absence of *Brodiaea filifolia* conservation efforts. As described in Section 3.2.2 of the DEA, the analysis predicts 316 homes will not be built in cities with habitat proposed for designation (summarized in Exhibit A–2 of the DEA). In an analysis of building permits in Sacramento County conducted by CRA, researchers determined that 22 percent of permits for single family dwellings were requested by small businesses. This analysis assumes that a similar proportion of new home construction activity is conducted by small construction firms in the five Southern California counties included in this analysis. As shown in Exhibit A–2 of the DEA, multiplying 22 percent by the number of homes not built in each county provides an estimate of lost home construction for small firms.

(3) Next, using the number of homes not built by small firms, the analysis estimates the number of small businesses affected. Results of this calculation are presented in Exhibit A–2. At the high-end, assuming that each lost house would have been built by a separate firm, the number of firms potentially affected is equal to the number of lost homes. For a low-end estimate, the number of houses not built is divided by the average number of houses built per year by small firms (three houses). In summary, in a given municipality containing proposed critical habitat, between one and 18 small construction firms may be affected annually by *Brodiaea filifolia* conservation activities. In Hemet, Moreno Valley, and Perris, where habitat is excluded from proposed critical habitat, approximately nine to 82 small firms could be affected if habitat were designated. The impact to affected small businesses is estimated to be between one-third and all of their revenues for the year, depending on the estimate of the number of businesses affected. Note that the impact to small construction firms may be overstated. As discussed in Section 3 of the DEA, the analysis of lost housing units is partial equilibrium in nature (*e.g.*, does not consider substitution of displaced development to other nearby areas), which is consistent with the best currently available empirical information. If, instead, homes not built in these municipalities are constructed in neighboring communities unaffected by brodiaea conservation activities, the impact to small construction firms is likely to be less than presented in Exhibit A–2. As a result, impacts to these firms are more likely overstated than understated in this analysis.

Based on these data, we have determined that this proposed designation would not result in a significant economic impact on a substantial number of small entities, in particular to land developers or farmers in Los Angeles, San Bernardino, Orange, Riverside, and San Diego counties. We may also exclude areas from the final designation if it is determined that these localized areas have an impact to a substantial number of businesses and a significant proportion of their annual revenues. As such, we are certifying that this proposed designation of critical habitat would not result in a significant economic impact on a substantial number of small entities. Please refer to Appendix A of our draft economic analysis of this designation for a more detailed discussion of potential economic impacts to small business entities.

Executive Order 13211

On May 18, 2001, the President issued Executive Order (E.O.) 13211 on regulations that significantly affect energy supply, distribution, and use. E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This proposed rule is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant action, and no Statement of Energy Effects is required. Please refer to Appendix A of our draft economic analysis of this proposed designation for a more detailed discussion of potential effects on energy supply.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501), the Service makes the following findings:

(a) This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, tribal governments, or the private sector and includes both ''Federal intergovernmental mandates'' and ''Federal private sector mandates.'' These terms are defined in 2 U.S.C. 658(5)–(7). ''Federal intergovernmental mandate'' includes a regulation that ''would impose an enforceable duty upon State, local, or tribal governments'' with two exceptions. It excludes ''a condition of federal assistance.'' It also excludes ''a duty arising from participation in a voluntary Federal program,'' unless the regulation ''relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority,'' if the provision would ''increase the stringency of conditions of assistance'' or ''place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding'' and the State, local, or tribal governments ''lack authority'' to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; AFDC work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. ''Federal private sector mandate'' includes a regulation that ''would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance; or (ii) a duty arising from participation in a voluntary Federal program.''

The designation of critical habitat does not impose a legally binding duty on non-Federal government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. Non-Federal entities that receive Federal funding, assistance, permits, or otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat. However, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply; nor would critical habitat shift the costs of the large entitlement programs listed above on to State governments.

(b) The United States Forest Service manages Cleveland National Forest (units 5a and 5b); Orange County's Department of Harbors, Beaches and Parks manages Aliso-Wood Canyon Regional Park (unit 3) and Casper's Regional Park (unit 4); and the Glendora

Community Conservancy manages the Conservancy (unit 1a) of the same name. With the exception of the Glendora Community Conservancy, these entities exceed the threshold established for small governments (service population of 50,000 or less). Therefore, the Glendora Community Conservancy is the only land manager considered in this screening analysis.

The DEA (See Section 6) estimates potential costs to public and private land management entities. Of the entities analyzed, the Glendora Community Conservancy is the only small entity. This section estimates potential impacts of *Brodiaea filifolia* conservation activities to the Conservancy.

The Conservancy's overall annual budget ranges from $15,000 to $30,000 and includes such elements as insurance, discounted land taxes, weed abatement, and trail maintenance. The analysis estimates that potential future costs associated with *Brodiaea filifolia* conservation activities at the Conservancy may range from $1,600 to $2,600 on an annualized basis (assuming a seven percent discount rate). These costs represent approximately 11 percent to 17 percent of annual expenditures assuming the low-end estimate of the annual budget ($15,000) and 5 percent to 9 percent assuming the high-end estimate ($30,000). Considering that the Glendora Community Conservancy is in the business of conservation, this is not an unexpected expenditure for the Conservancy. Consequently, we do not believe that the designation of critical habitat for *B. filifolia* will significantly or uniquely affect any small governmental entity addressed in the DEA. As such, a Small Government Agency Plan is not required.

Takings

In accordance with Executive Order 12630 (''Government Actions and Interference with Constitutionally Protected Private Property Rights''), we have analyzed the potential takings implications of proposing critical habitat for *Brodiaea filifolia*. Critical habitat designation does not affect landowner actions that do not require Federal funding or permits, nor does it preclude development of habitat conservation programs or issuance of incidental take permits to permit actions that do require Federal funding or permits to go forward. In conclusion, the designation of critical habitat for *B. filifolia* does not pose significant takings implications.

Author

The primary authors of this notice are the staff of the Carlsbad Fish and Wildlife Office (*see* **ADDRESSES** section).

Authority

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

Dated: September 26, 2005.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 05–20050 Filed 10–5–05; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 050927248–5248–01; I.D. 090805C]

RIN 0648–AT74

Atlantic Highly Migratory Species; Atlantic Commercial Shark Management Measures

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

ACTION: Proposed rule; request for comments.

SUMMARY: This proposed rule would establish the 2006 first trimester season quotas for large coastal sharks (LCS) and small coastal sharks (SCS) based on over- and underharvests from the 2005 first trimester season. In addition, this rule proposes the opening and closing dates for the LCS fishery based on adjustments to the trimester quotas. The intended effect of these proposed actions is to provide advance notice of quotas and season dates for the Atlantic commercial shark fishery.

DATES: Written comments will be accepted until November 7, 2005.

ADDRESSES: Written comments on the proposed rule may be submitted to Chris Rilling, Highly Migratory Species Management Division via:

- E-mail: *SF1.090805C@noaa.gov*.
- Mail: 1315 East-West Highway, Silver Spring, MD 20910. Please mark the outside of the envelope ''Comments on Proposed Rule for 1st Trimester Season Lengths and Quotas.''
- Fax: 301–713–1917.
- Federal e-Rulemaking portal: *http://www.regulations.gov*. Include in the subject line the following identifier: I.D. 090805C.

FOR FURTHER INFORMATION CONTACT: Chris Rilling or Karyl Brewster-Geisz by phone: 301–713–2347 or by fax: 301–713–1917.

SUPPLEMENTARY INFORMATION:

Proposed Opening and Closing Dates and Quotas

Proposed opening and closing dates and quotas for the 2006 first trimester season by region are provided in Table 1.

TABLE 1 — PROPOSED OPENING AND CLOSING DATES AND QUOTAS

Species Group	Region	Opening Date	Closing Date	Quota
Large Coastal Sharks	Gulf of Mexico	January 1, 2006	April 15, 2006 11:30 p.m. local time	222.8 mt dw (491,185 lb dw)
	South Atlantic		March 15, 2006 11:30 p.m. local time	141.3 mt dw (311,510 lb dw)
	North Atlantic		April 30, 2006 11:30 p.m. local time	5.3 mt dw (11,684 lb dw)
Small Coastal Sharks	Gulf of Mexico	January 1, 2006	To be determined, as necessary	14.8 mt dw (32,628 lb dw)
	South Atlantic			284.6 mt dw (627,429 lb dw)

TABLE 1 — PROPOSED OPENING AND CLOSING DATES AND QUOTAS—Continued

Species Group	Region	Opening Date	Closing Date	Quota
	North Atlantic			18.7 mt dw (41,226 lb dw)
Blue sharks	No regional quotas	January 1, 2006	To be determined, as necessary	91 mt dw (200,619 lb dw)
Porbeagle sharks				30.7 mt dw (67,681 lb dw)
Pelagic sharks other than blue or porbeagle				162.7 mt dw (358,688 lb dw)

Background

The Atlantic shark fishery is managed under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The Fishery Management Plan (FMP) for Atlantic Tunas, Swordfish, and Sharks, finalized in 1999, and Amendment 1 to the FMP for Atlantic Tunas, Swordfish, and Sharks (Amendment 1), finalized in 2003, are implemented by regulations at 50 CFR part 635.

On December 24, 2003, NMFS published a final rule (68 FR 74746) for Amendment 1 that established, among other things, an annual landings quota of 1,017 metric tons (mt) dressed weight (dw) for LCS, and an annual landings quota of 454 mt dw for SCS. The final rule also established regional LCS and SCS quotas for the commercial shark fishery in the Gulf of Mexico (Texas to the west coast of Florida), South Atlantic (east coast of Florida to North Carolina and the Caribbean), and North Atlantic (Virginia to Maine). The quota for LCS was split among the three regions based upon historic landings.

On November 30, 2004, NMFS published a final rule (69 FR 69537) that, among other things, adjusted the 2005 regional quotas for LCS and SCS based on updated landings information, divided the quotas among the three trimester seasons, and implemented a new process for notifying participants of season opening and closing dates and quotas.

Consistent with 50 CFR 635.27(b)(1)(iii), as adjusted by the 2004 final rule, the annual LCS quota (1,017 mt dw) is split among the three regions as follows: 52 percent to the Gulf of Mexico, 41 percent to the South Atlantic, and 7 percent to the North Atlantic. The annual SCS quota (454 mt dw) is split among the three regions as follows: 10 percent to the Gulf of Mexico, 87 percent to the South Atlantic, and 3 percent to the North Atlantic. The regional quotas for LCS and SCS were divided equally between the trimester seasons in the South Atlantic and the Gulf of Mexico, and according to historical landings of 4, 88, and 8 percent for LCS, and 1, 9, and 90 percent for SCS in the first, second, and third trimester seasons, respectively, in the North Atlantic.

The quotas were divided in this manner because sharks are available throughout much of the year in the Gulf of Mexico and South Atlantic regions, but primarily during the summer months in the North Atlantic region. Dividing the quotas equally between the three trimester seasons in the South Atlantic also resulted in a greater proportion of the quota being made available during August and September when the time/area closure off North Carolina is no longer in effect.

Consistent with 50 CFR 635.27(b)(1)(vi), any over- or underharvest in a given region from the 2005 first trimester season will be carried over to the 2006 first trimester season. This action would not change the 2006 base landings quota or the 2006 regional quotas established in the November 30, 2004, final rule.

In addition, the November 30, 2004, final rule established a process for issuing proposed and final rules to notify interested parties of season lengths and quotas and to facilitate public comment.

Annual Landings Quotas

Pursuant to Amendment 1, the 2006 annual base landings quotas are 1,017 mt dw (2,242,078 lb dw) for LCS and 454 mt dw (1,000,888.4 lb dw) for SCS. The 2006 quota levels for pelagic, blue, and porbeagle sharks are 488 mt dw (1,075,844.8 lb dw), 273 mt dw (601,855.8 lb dw), and 92 mt dw (202,823.2 lb dw), respectively. This proposed rule does not propose any changes to these overall base landings quotas.

As of August 22, 2005, the overall 2005 first trimester season quotas for LCS and SCS had not been exceeded. Reported landings of LCS for all regions combined were at 84 percent (249.6 mt dw) of the LCS first trimester season quota (295.9 mt dw), and SCS landings for all regions combined were at 30 percent (74.6 mt dw) of the overall SCS trimester quota (246.0 mt dw).

Gulf of Mexico Regional Landings Quotas

For all regions, the proposed quotas may change depending on any updates to the reported landings from the 2005 first trimester season. In 2005, preliminary data indicate that for LCS, the Gulf of Mexico had an underharvest of 46.7 mt dw in the first trimester season. As a result, the Gulf of Mexico LCS quota for the 2006 first trimester season is proposed to be 222.8 mt dw, ((1,017*0.52*0.333)+46.7).

In 2005, preliminary data indicate that for SCS, the Gulf of Mexico had an overharvest of 0.3 mt dw in the first trimester season. As a result, the Gulf of Mexico SCS quota for the 2006 first trimester season is proposed to be 14.8 mt dw, ((454*0.10*0.333)-0.3).

South Atlantic Regional Landings Quotas

In 2005, preliminary data indicate that for LCS, the South Atlantic had an underharvest of 2.4 mt dw in the first trimester season. As a result, the South Atlantic LCS quota for the 2006 first trimester season is proposed to be 141.3 mt dw, ((1,017*0.41*0.333)+2.4).

In 2005, preliminary data indicate that for SCS, the South Atlantic had an underharvest of 153.1 mt dw in the first trimester season. As a result, the South Atlantic SCS quota for the 2006 first trimester season is proposed to be 284.6 mt dw, ((454*0.87*0.333)+153.1).

North Atlantic Regional Landings Quotas

In 2005, preliminary data indicate that for LCS, the North Atlantic had an underharvest of 2.5 mt dw in the first trimester season. The North Atlantic LCS quota for the 2006 first trimester

season is proposed to be 5.3 mt dw, ((1,017*0.07*0.04)+2.5).

In 2005, preliminary data indicate that for SCS, the North Atlantic had an underharvest of 18.6 mt dw in the first trimester season. As a result, the North Atlantic SCS quota for the 2006 first trimester season is proposed to be 18.7 mt dw, ((454*0.03*0.01)+18.6).

Pelagic Shark Quotas

As of August 2005, approximately 23.1 mt dw had been reported landed in the 2005 first trimester fishing season in total for pelagic, blue, and porbeagle sharks combined. Thus, the pelagic shark quota does not need to be reduced consistent with the current regulations 50 CFR 635.27(b)(1)(iv). The 2006 first trimester season quotas for pelagic, blue, and porbeagle sharks are proposed to be 162.7 mt dw (358,688 lb dw), 91 mt dw (200,619 lb dw), and 30.7 mt dw (67,681 lb dw), respectively.

Proposed Fishing Season Notification for the First Trimester Season

The first trimester fishing season of the 2006 fishing year for SCS, pelagic sharks, blue sharks, and porbeagle sharks in the northwestern Atlantic Ocean, including the Gulf of Mexico and the Caribbean Sea, is proposed to open on January 1, 2006. When quotas are projected to be reached for the SCS, pelagic, blue, or porbeagle sharks, the Assistant Administrator (AA) will file notification of closures at the Office of **Federal Register** at least 14 days before the effective date, consistent with 50 CFR 635.28(b)(2).

The first trimester fishing season of the 2006 fishing year for LCS is proposed to open on January 1, 2006, in the South Atlantic, North Atlantic, and Gulf of Mexico regions. To estimate the LCS fishery closing dates for the first trimester season, NMFS calculated the average catch rates from January through April during the first season in recent years (2002–2005). Because state landings during a Federal closure are counted against the quota, NMFS also calculated the average amount of quota reported received during the Federal closure dates of the years used to estimate catch rates.

Pursuant to 50 CFR 635.5(b)(1), shark dealers must report any sharks received twice a month. More specifically, sharks received between the first and 15th of every month must be reported to NMFS by the 25th of that same month and those received between the 16th and the end of the month must be reported to NMFS by the 10th of the following month. Thus, in order to provide consistency and predictability in managing the fishery, NMFS proposes to close the Federal LCS fishery on either the 15th or the end of any given month.

Based on the average January through April LCS catch rates in recent years in the Gulf of Mexico region, approximately 91 percent of the available first trimester LCS quota (222.8 mt dw) would likely be taken by the second week in April, and 103 percent of the available LCS quota would likely be taken by the end of April. Dealer data also indicate that, on average, approximately 5.4 mt dw of LCS has been reported received by dealers during a Federal closure. This is approximately 2.4 percent of the proposed available quota. If catch rates in 2006 are similar to the average catch rates from 2002 through 2005, 93.4 percent (91 + 2.4 percent) of the first trimester quota could be caught by the second week in April. If the fishery remains open until the end of April, the quota could be exceeded (103 + 2.4 = 105.4 percent). Thus, NMFS proposes to close the fishery in the Gulf of Mexico on April 15, 2006.

Based on the average January through April LCS catch rates in recent years in the South Atlantic region, and accounting for the reduction in effort due to the time/area closure off North Carolina, approximately 79 percent of the available first trimester LCS quota (141.3 mt dw) would likely be taken by the second week in March, and 88 percent of the available LCS quota would likely be taken by the end of March. Dealer data also indicate that, on average, approximately 28 mt dw of LCS has been reported received by dealers during a Federal closure. This is approximately 20 percent of the proposed available quota. If catch rates in 2006 are similar to the average catch rates from 2002 through 2005, 99 percent (79 + 20 percent) of the first trimester quota could be caught by the second week in March. If the fishery remains open until the end of March, the quota could be exceeded (88 + 20 = 108 percent). Thus, NMFS proposes to close the fishery in the South Atlantic on March 15, 2006.

Based on the average January through April LCS catch rates in recent years in the North Atlantic region, approximately 57 percent of the available first trimester LCS quota (5.4 mt dw) would likely be taken by the end of April. Dealer data also indicate that no LCS landings have been reported received by dealers after a Federal closure and before the start of the second trimester season on May 1, 2006. Accordingly, NMFS proposes to close the fishery in the North Atlantic on April 30, 2006.

Request for Comments

Comments on the proposed rule may be submitted via email, mail, or fax by November 7, 2005 (see **DATES** and **ADDRESSES**).

Classification

This proposed rule is published under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801 *et seq.* Consistent with 50 CFR 635.27(b)(1)(vi), the purpose of this action is to adjust the LCS trimester quotas based on over- or underharvests from the 2005 fishing season, and to announce the 2006 first trimester season opening and closing dates. This proposed rule will not increase the overall quotas or landings for LCS or SCS, and is not expected to increase fishing effort or protected species interactions.

On November 30, 2004, NMFS published a final rule (69 FR 69537) that, among other things, adjusted the 2005 regional quotas for LCS and SCS based on updated landings information and divided the quotas among the three trimester seasons. A final regulatory flexibility analysis (FRFA) conducted for the November 2004 rule indicated that there were approximately 253 directed commercial shark permit holders, 358 incidental commercial shark permit holders, and 267 commercial shark dealers, all of which are considered small entities according to the Small Business Administration's standard for defining a small entity (5 U.S.C. 603(b)(3)). The FRFA concluded that overall economic impacts of adjusting the regional quotas on these small entities were expected to be minimal. As of April 20, 2005, there were approximately 229 directed commercial shark permit holders, 321 incidental commercial shark permit holders, and 230 commercial shark dealers.

This proposed rule would not change the overall LCS or SCS base landings quotas or the overall regional quotas established in the November 2004 rule, or implement any new management measures not previously considered, and is not expected to increase fishing effort or protected species interactions. This proposed rule would adjust the quotas for each of the regions based on underharvests from the 2005 first trimester season consistent with 50 CFR 635.27(b)(1)(vi).

The Gulf of Mexico was the only region with an overharvest of 0.3 mt dw of its SCS quota, and will have its SCS regional quota lowered by this corresponding amount. The 2003 average ex-vessel price for LCS flesh was $0.78/lb dw, and the average ex-

vessel price for SCS flesh was $0.43/lb dw. Although shark fins command a higher price ($17.09/lb dw), they represent only a small proportion of the total landings. The Gulf of Mexico experienced a net underharvest of 46.7 mt dw (+$80,304, excluding fins) of LCS, and a net overharvest of 0.3 mt dw (-$284) of SCS during the 2005 first trimester season. Thus the net economic impact to the Gulf of Mexico is approximately +$80,020. This represents approximately 20 percent of the estimated 2006 first trimester gross revenue of $397,154, ($383,124 for LCS, excluding fins, + $13,875 for SCS) for the Gulf of Mexico region. Given that there are approximately 35 active shark vessels (defined as vessels with greater than 25 percent of landings derived from sharks as reported in the snapper-grouper logbook) in the Gulf of Mexico, this could result in an increase in revenue of approximately $2,286 per vessel during the 2006 first trimester season.

For the South Atlantic and North Atlantic, which both experienced underharvests of 2.4 and 2.5 mt dw for LCS, respectively, and 153.1 and 18.6 mt dw for SCS, respectively, during the 2005 first trimester season, the net economic impact would also be positive. For the South Atlantic, if the entire quota is caught, this could result in a net economic benefit of approximately $149,262, ($4,127 for LCS, excluding fins, + $145,135 for SCS). This represents approximately 29 percent of the estimated 2006 first trimester season gross revenue of $512,771, ($242,977 for LCS, excluding fins, + $269,794 for SCS) for the South Atlantic region. Given that there are approximately 28 active shark vessels in the South Atlantic, this could result in an increase in revenue of approximately $5,330 per vessel during the 2006 first trimester season.

For the North Atlantic, if the entire quota is caught, this could result in an economic benefit of approximately $4,299 for LCS, excluding fins, + $17,632 for SCS. This represents approximately 16 percent of the 2006 first trimester season gross revenue of $26,840, ($9,113 for LCS, excluding fins, + $17,727 for SCS) for the North Atlantic region. Given that there are fewer than 10 active shark vessels in the North Atlantic, this could result in an increase in revenue of approximately $2,684 per vessel during the 2006 first trimester season. The increases in possible revenue as a result of transferring the underharvests are only potential amounts that may or may not be realized. If it is not realized, then there would be no economic impact because the fishermen did not receive any benefit from the transfer. If it is realized, then it will result in a positive impact as described above. Thus, the Chief Counsel for Regulation at the Department of Commerce certified to the Chief Counsel for Advocacy at the Small Business Administration that this action would not have a significant economic impact on a substantial number of small entities beyond those considered in Amendment 1, or the November 2004 final rule (69 FR 69537).

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

NMFS has determined preliminarily that these regulations would be implemented in a manner consistent to the maximum extent practicable with the enforceable policies of those coastal states on the Atlantic including the Gulf of Mexico and Caribbean that have approved coastal zone management programs. Letters have been sent to the relevant states asking for their concurrence.

Dated: October 3, 2005.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 05–20111 Filed 10–3–05; 2:24 pm]

BILLING CODE 3510–22–S

Notices

Federal Register

Vol. 70, No. 193

Thursday, October 6, 2005

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket Number FV–05–304]

United States Standards for Grades of Fresh Asparagus

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: The Agricultural Marketing Service (AMS) of the Department of Agriculture (USDA) is soliciting comments on its proposal to revise the United States Standards for Grades of Fresh Asparagus. At a 2003 meeting of the Fruit and Vegetable Industry Advisory Committee, AMS was asked to review all the fresh fruit and vegetable grade standards for usefulness in serving the industry. As a result, AMS has noted the current U.S. Grade standards do not have provisions for grading purple or white asparagus. The proposed revision will allow purple or white asparagus to be certified to a U.S. grade.

DATES: Comments must be received by December 5, 2005.

ADDRESSES: Interested persons are invited to submit written comments to the Standardization Section, Fresh Products Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, 1400 Independence Ave. SW., Room 1661 South Building, Stop 0240, Washington, DC 20250–0240; Fax (202) 720–8871; E-mail *FPB.DocketClerk@usda.gov*. Comments should make reference to the dates and page number of the issue of the **Federal Register** and will be made available for public inspection in the above office during regular business hours. The current United States Standards for Grades of Fresh Asparagus, along with the proposed changes, will be available either through the address cited above or by accessing the AMS Home Page on the Web at *http://www.ams.usda.gov/standards/stanfrfv.htm*.

FOR FURTHER INFORMATION CONTACT: Cheri L. Emery, at the above address or call (202) 720–2185; E-mail *Cheri.Emery@usda.gov*.

SUPPLEMENTARY INFORMATION: Section 203(c) of the Agricultural Marketing Act of 1946 (7 U.S.C. 1621–1627), as amended, directs and authorizes the Secretary of Agriculture ''To develop and improve standards of quality, condition, quality, grade and packaging and recommend and demonstrate such standards in order to encourage uniformity and consistency in commercial practices.'' AMS is committed to carrying out this authority in a manner that facilitates the marketing of agricultural commodities and makes copies of official standards available upon request. The United States Standards for Grades of Fruits and Vegetables not connected with Federal Marketing Orders or U.S. Import Requirements, no longer appear in the Code of Federal Regulations, but are maintained by the USDA/AMS/Fruit and Vegetable Programs.

AMS is proposing to revise the U.S. Standards for Grades of Fresh Asparagus using the procedures that appear in part 36, title 7 of the Code of Federal Regulations (7 CFR part 36).

Background

At a meeting of the Fruit and Vegetable Industry Committee, AMS was asked to review all the fresh fruit and vegetable grade standards for usefulness in serving the industry. As a result, AMS has identified the U.S. Standards for Grades of Fresh Asparagus color requirement for possible updating. The color requirement only provides for the grading of green color asparagus and not purple or white asparagus.

Prior to undertaking research and other work associated with a revision of the grade, AMS published a notice on March 29, 2005 in the **Federal Register** (70 FR 59) soliciting comments on the possible revision of the United States Standards for Grades of Fresh Asparagus.

In response to the request for comments, AMS received three comments on the proposed revision. One comment was from an industry group supporting the proposal. The second comment was from a private individual that did not support the revision and was generally opposed to a federal grade standard. And the third comment was from another industry group supporting the development of standards for white and purple asparagus. However, the commenter believes that separate standards are needed, noting that any change to the current standards would compromise the fresh green asparagus marketing standards. We disagree that separate standards for white and purple asparagus are necessary and no change to the current green asparagus requirements are anticipated. The comments are available by accessing AMS's Home Page on the Internet at: *http://www.ams.usda.gov/fvfpbdocketlist.htm*.

AMS believes that a revision to include purple and white requirements in the color section of the standards is warranted to facilitate the marketing of purple and white asparagus and improve the usefulness of the standards in better serving the industry.

Additionally, AMS is eliminating the unclassified category. This section is being removed in all standards, when they are revised. This category is not a grade and only serves to show that no grade has been applied to a lot or shipment.

The official grade of a lot or shipment of fresh asparagus covered by the standards is determined by the procedures set forth in the Regulations Governing Inspection, Certification, and Standards of Fresh Fruits, Vegetables and Other Products (Sec. 51.1 to 51.61).

This notice provides a 60-day comment period for interested parties to comment on changes to the standards.

Authority: 7 U.S.C. 1621–1627.

Dated: October 3, 2005.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. 05–20091 Filed 10–5–05; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket Number FV–05–309]

United States Standards for Grades of Dewberries and Blackberries

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: The Agricultural Marketing Service (AMS) published a notice soliciting comments on a proposal to revise the color requirements in the voluntary United States Standards for Grades of Dewberries and Blackberries. The Agency has decided not to proceed further with this action due to the comments and concerns received from the industry.

EFFECTIVE DATE: October 6, 2005.

FOR FURTHER INFORMATION CONTACT: Cheri L. Emery, Standardization Section, Fresh Products Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Room 1661 South Building, STOP 0240, Washington, DC 20250–0240, Fax (202) 720–8871 or call (202) 720–2185; E-mail *Cheri.Emery@usda.gov*. The United States Standards for Grades of Dewberries and Blackberries are available either through the address cited above or by accessing the Fresh Products Branch Web site at: *http://www.ams.usda.gov/standards/stanfrfv.htm.*

Background

At a 2003 meeting with the Fruit and Vegetable Industry Advisory Committee, AMS was asked to review all the fresh fruit and vegetable grade standards for usefulness in serving the industry. AMS had identified the United States Standards for Grades of Dewberries and Blackberries for a possible revision. The United States Standards for Grades of Dewberries and Blackberries were last amended on February 13, 1928.

On June 21, 2005, a notice seeking comments on the possible revision of the standards to allow for a lesser amount of color or varying shades of color was published in the **Federal Register** (70 FR 21392) with the comment period ending August 22, 2005.

Two comments were received from the industry during the official period for comment. Both comments received did not support the revision of the standards based on color being a factor of the ripening process, and the effect that it has on the marketing of dewberries and blackberries.

After reviewing and considering the comments received, the Agency has decided not to proceed further with this action.

Authority: 7 U.S.C. 1621–1627.

Dated: October 3, 2005.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. 05–20095 Filed 10–5–05; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Forest Service

Lake Tahoe Basin Federal Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Lake Tahoe Basin Federal Advisory Committee will hold a meeting on October 25, 2005, at the Inn by the Lake, 3300 Lake Tahoe Blvd., South Lake Tahoe, CA 96150. This Committee, established by the Secretary of Agriculture on December 15, 1998 (64 FR 2876), is chartered to provide advice to the Secretary on implementing the terms of the Federal Interagency Partnership on the Lake Tahoe Region and other matters raised by the Secretary.

DATES: The meeting will be held October 25, 2005, beginning at 3:15 p.m. and ending at 5 p.m.

ADDRESSES: The meeting will be held at the Inn by the Lake, 3300 Lake Tahoe Blvd., South Lake Tahoe, CA 96150.

FOR FURTHER INFORMATION CONTACT: Gloria Trahey, Lake Tahoe Basin Management Unit, Forest Service, 35 College Drive, South Lake Tahoe, CA 96150, (530) 543–2643.

SUPPLEMENTARY INFORMATION: The committee will meet jointly with the Lake Tahoe Basin Executives Committee. Items to be covered on the agenda include: (1) The Environmental Improvement Program at Lake Tahoe; (2) the Southern Nevada Public Land Management Act—Round 7; and, (3) Public Comment. All Lake Tahoe Basin Federal Advisory Committee meetings are open to the public. Interested citizens are encouraged to attend at the above address. Issues may be brought to the attention of the Committee during the open public comment period at the meeting or by filing written statements with the secretary for the Committee before or after the meeting. Please refer any written comments to the Lake Tahoe Basin Management Unit at the contact address stated above.

Dated: September 30, 2005.

Tyrone Kelley,

Deputy Forest Supervisor.

[FR Doc. 05–20053 Filed 10–5–05; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Foreign–Trade Zones Board

[Docket T–3–2005]

Foreign–trade Zone 77 — Memphis, Tennessee, Application for Temporary/interim Manufacturing Authority, Brother Industries (U.S.A.) Inc., (Manufacture/Refurbish Toner Cartridges), Bartlett, Tennessee

An application has been submitted to the Executive Secretary of the Foreign–Trade Zones Board (the Board) by the City of Memphis and Shelby County, Division of Planning and Economic Development, grantee of FTZ 77, requesting temporary/interim manufacturing (T/IM) authority within Subzone 77B at the Brother Industries (U.S.A.) Inc. plant located in Bartlett, Tennessee. The application was filed on September 29, 2005.

The Brother facility (260 employees; annual capacity for 120,000 toner cartridges) is located within Subzone 77B. Under T/IM procedures, the company has requested authority to manufacture, remanufacture, charge and recharge toner cartridges (HTS 8472.90 and 8473.30; these products enter the United States duty free). The company may source the following items from abroad for manufacturing of one or both of the finished products under T/IM authority, as delineated in Brother's application: toner (HTS 3707.90); toner caps (3923.50); collars, guards, and covers (3926.90); seals (5911.90); labels (4821.10); developer rollers (9009.99); bearings (8483.30); springs (7320.20); gears (8483.90); retaining rings (7318.29); washers (7318.22); and ''lower film'' (3919.90). Duty rates on these inputs range from duty–free to 6.5%. T/IM authority could be granted for a period of up to two years. Brother has also submitted a request for permanent FTZ manufacturing authority (for which Board filing is pending), which includes five additional inputs.

FTZ procedures would allow Brother to elect the finished–product duty rates for the imported production inputs listed above. The company indicates that it would also realize logistical/paperwork savings under FTZ procedures.Public comment is invited

from interested parties. Submissions shall be addressed to the Board's Executive Secretary at one of the following addresses:

1. Submissions Via Express/Package Delivery Services: Foreign–Trade-Zones Board, U.S. Department of Commerce, Franklin Court Building - Suite 4100W, 1099 14th St. NW, Washington, D.C. 20005; or
2. Submissions Via the U.S. Postal Service: Foreign–Trade-Zones Board, U.S. Department of Commerce, FCB - Suite 4100W, 1401 Constitution Ave. NW, Washington, D.C. 20230.

The closing period for their receipt is November 7, 2005.

A copy of the application will be available for public inspection at the Office of the Foreign-Trade Zones Board's Executive Secretary at the first address listed above.

Dated: September 29, 2005.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 05–20116 Filed 10–5–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

[Docket No. 050923246–5246–01]

National Defense Stockpile Market Impact Committee Request for Public Comments on the Potential Market Impact of Proposed Stockpile Disposals for FY 2007

AGENCY: U.S. Department of Commerce.

ACTION: Notice of inquiry.

SUMMARY: This notice is to advise the public that the National Defense Stockpile Market Impact Committee, co-chaired by the Departments of Commerce and State, is seeking public comments on the potential market impact of the proposed disposal levels for excess materials from the National Defense Stockpile for the Fiscal Year (FY) 2007 Annual Materials Plan (AMP).

DATES: Comments must be received by November 7, 2005.

ADDRESSES: Written comments should be sent to either William J. Denk, Co-chair, National Defense Stockpile Market Impact Committee, Office of Strategic Industries and Economic Security, Room 3876, Bureau of Industry and Security, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; Fax: (202) 482–5650; E-mail: *wdenk@bis.doc.gov;* or to Stanley Specht, Co-chair, National Defense Stockpile Market Impact Committee, Office of Bilateral Trade Affairs, Bureau of Economic and Business Affairs, U.S. Department of State, Fax: (202) 647–8758; E-mail: *spechtsh@state.gov.*

FOR FURTHER INFORMATION CONTACT: Eddy Aparicio, Office of Strategic Industries and Economic Security, Bureau of Industry and Security, U.S. Department of Commerce, telephone: (202) 482–8234; E-mail: *eaparici@bis.doc.gov.*

SUPPLEMENTARY INFORMATION: Under the authority of the Strategic and Critical Materials Stock Piling Act of 1979, as amended (50 U.S.C. 98 *et seq.*), the Department of Defense (DOD), as National Defense Stockpile Manager, maintains a stockpile of strategic and critical materials to supply the military, industrial, and essential civilian needs of the United States for national defense. Section 3314 of the Fiscal Year (FY) 1993 National Defense Authorization Act (NDAA) (50 U.S.C. 98h–1) formally established a Market Impact Committee (the Committee) to ''advise the National Defense Stockpile Manager on the projected domestic and foreign economic effects of all acquisitions and disposals of materials from the stockpile * * *'' The Committee must also balance market impact concerns with the statutory requirement to protect the Government against avoidable loss.

The Committee is comprised of representatives from the Departments of Commerce, State, Agriculture, Defense, Energy, Interior, Treasury, and Homeland Security, and is co-chaired by the Departments of Commerce and State. The FY 1993 NDAA directs the Committee to consult with industry representatives that produce, process, or consume the materials contained in the stockpile.

In Attachment 1, the Defense National Stockpile Center (DNSC) lists the proposed quantities that are enumerated in the stockpile inventory for the FY 2007 Annual Materials Plan (AMP). The Committee is seeking public comments on the potential market impact of the sale of these materials.

The quantities listed in Attachment 1 are not disposal or sale target quantities. They are only a statement of the proposed maximum disposal quantity of each listed material that may be sold in a particular fiscal year by the DNSC. The quantity of each material that will actually be offered for sale will depend on the market for the material at the time of the offering as well as on the quantity of each material approved for disposal by Congress.

The Committee requests that interested parties provide written comments, supporting data and documentation, and any other relevant information on the potential market impact of the sale of these commodities. Although comments in response to this Notice must be received by November 7, 2005 to ensure full consideration by the Committee, interested parties are encouraged to submit comments and supporting information at any time thereafter to keep the Committee informed as to the market impact of the sale of these commodities. Public comments are an important element of the Committee's market impact review process.

Public comments received will be made available at the Department of Commerce for public inspection and copying. Anyone submitting business confidential information should clearly identify the business confidential portion of the submission and also provide a non-confidential submission that can be placed in the public record. The Committee will seek to protect such information to the extent permitted by law.

The records related to this Notice will be made accessible in accordance with the regulations published in Part 4 of Title 15 of the Code of Federal Regulations (15 CFR 4.1, *et seq.*). Specifically, the Bureau of Industry and Security's Freedom of Information Act (FOIA) reading room is located on its Web page found at *http://www.bis.doc.gov/foia/default.htm.* Copies of the public comments received will be maintained on the Web site. If requesters cannot access the Web site, they may call (202) 482–2165 for assistance.

Dated: September 30, 2005.

Matthew S. Borman,

Deputy Assistant Secretary for Export Administration.

Attachment 1

PROPOSED FY 2007 ANNUAL MATERIALS PLAN

Material	Unit	Quantity	Footnote
Aluminum Oxide, Abrasive	ST	6,000	

PROPOSED FY 2007 ANNUAL MATERIALS PLAN—Continued

Material	Unit	Quantity	Footnote
Bauxite, Metallurgical Jamaican	LDT	2,000,000	
Bauxite, Metallurgical Surinam	LDT	2,000	
Bauxite, Refractory	LCT	10,000	
Beryl Ore	ST	4,000	
Beryllium Metal	ST	40	
Beryllium Copper Master Alloy	ST	1,200	
Chromite, Chemical	SDT	5,000	
Chromite, Refractory	SDT	93,000	
Chromium, Ferro	ST	150,000	
Chromium, Metal	ST	1,000	
Cobalt	LB Co	2,000,000	1
Columbium Concentrates	LB Cb	560,000	
Columbium Metal Ingots	LB Cb	20,000	
Diamond Stone	ct	520,000	1
Fluorspar, Acid Grade	SDT	12,000	1
Fluorspar, Metallurgical Grade	SDT	60,000	1
Germanium	Kg	8,000	
Graphite	ST	60	1
Iodine	LB	1,000,000	1
Jewel Bearings	PC	82,051,558	1
Lead	ST	35,000	1
Manganese, Battery Grade, Natural	SDT	30,000	1
Manganese, Battery Grade, Synthetic	SDT	3,011	
Manganese, Chemical Grade	SDT	40,000	
Manganese, Ferro	ST	100,000	
Manganese, Metallurgical Grade	SDT	500,000	
Mica, All	LB	17,000	1
Platinum	Tr Oz	9,000	1
Platinum—Iridium	Tr Oz	6,000	
Quinidine	Av Oz	21,000	
Talc	ST	1,000	
Tantalum Carbide Powder	LB Ta	4,000	
Tantalum Metal Powder	LB Ta	10,000	1
Tantalum Minerals	LB Ta	500,000	
Tantalum Oxide	LB Ta	20,000	
Tin	MT	12,000	
Tungsten Ferro	LB W	300,000	1
Tungsten Metal Powder	LB W	300,000	
Tungsten Ores & Concentrates	LB W	8,000,000	
VTE, Chestnut	LT	120	1
VTE, Quebracho	LT	6,000	
VTE, Wattle	LT	300	1
Zinc	ST	50,000	

Notes:
1. Actual quantity will be limited to remaining inventory.

[FR Doc. 05–20044 Filed 10–5–05; 8:45 am]
BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

International Trade Administration

(A–588–703)

Internal–Combustion Forklift Trucks from Japan; Final Results of the Expedited Sunset Review of the Antidumping Duty Order

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

SUMMARY: On March 1, 2005, the Department of Commerce (''the Department'') initiated a sunset review of the antidumping duty order on internal–combustion forklift trucks from Japan pursuant to section 751(c) of the Tariff Act of 1930, as amended (''the Act''). The Department conducted an expedited (120-day) sunset review of this order. As a result of this sunset review, the Department finds that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping. The dumping margins are identified in the *Final Results of Review* section of this notice.

EFFECTIVE DATE: October 6, 2005.

FOR FURTHER INFORMATION CONTACT: David Layton or David Goldberger, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–0371 and (202) 482–0182, respectively.

SUPPLEMENTARY INFORMATION:

Background:

On March 1, 2005, the Department published the notice of initiation of the second sunset review of the antidumping duty order covering internal–combustion forklift trucks from Japan pursuant to section 751(c) of the Act. *See Initiation of Five-year (Sunset) Reviews*, 70 FR 9919 (March 1, 2005). On May 16, 2005, the Department extended the period of time for making its determination by 90 days pursuant to section 751(c)(5)(B) of the Act. *See Extension of Time Limits for the Final Results of Sunset Reviews of Antidumping and Countervailing Duty Orders*, 70 FR 25808 (May 16, 2005).

The Department received the Notice of Intent to Participate from NACCO Materials Handling Group, Inc. (NMHG), a domestic interested party, within the deadline specified in section 351.218(d)(1)(i) of the Department's regulations (Sunset Regulations). NMHG claimed interested party status under section 771(9)(C) of the Act, as a manufacturer of the domestic like product in the United States.

We received complete substantive responses from NMHG within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i). We received no responses from the respondent interested parties. As a result, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), the Department conducted an expedited (120-day) sunset review of this order.

Scope of the Order

The products covered by this order are certain internal–combustion, industrial forklift trucks, with lifting capacity of 2,000 to 15,000 lbs. Imports of these products were classified under item numbers 692.4025, 692.4030, and 692.4070 of the Tariff Schedules of the United States Annotated (TSUSA) and are currently classifiable under Harmonized System (HTSUS) item numbers 8427.20.00, 8427.90.00, and 8431.20.00. Although the HTSUS item numbers are provided for convenience and customs purposes, the written description remains dispositive.

The products covered by this order are further described as follows: Assembled, not assembled, and less than complete, finished and not finished, operator–riding forklift trucks powered by gasoline, propane, or diesel fuel internal–combustion engines of off–the-highway types used in factories, warehouses, or transportation terminals for short–distance transport, towing, or handling of articles. Less than complete forklift trucks are defined as imports which include a frame by itself or a frame assembled with one or more component parts. Component parts of the subject forklift trucks which are not assembled with a frame are not covered by this order.

Products not covered by this order are genuinely used forklifts. For the purposes of this antidumping duty order, we consider any forklift to be used if, at the time of entry into the United States, the importer can demonstrate to the satisfaction of the U.S. Customs and Border Protection (CBP) that the forklift was manufactured in a calendar year at least three years prior to the year of entry into the United States. The importer must show documentation from industrial publications that reconcile the serial number and year of manufacture of the forklift. If the calendar year of manufacture is at least three years prior to its year of entry into the United States, it will not be subject to the suspension of liquidation or any assessment of antidumping duties. For example, if a forklift is entered or withdrawn from warehouse, for consumption in June 1988 and if the importer demonstrates through industrial publications that the forklift was manufactured in or before calendar year 1985, that forklift will not be covered by this order.

Analysis of Comments Received

All issues raised in this review are addressed in the Issues and Decision Memorandum for the Expedited Sunset Review of the Antidumping Duty Order on Internal–Combustion Forklift Trucks from Japan Final Results (Decision Memo) from Barbara E. Tillman, Acting Deputy Assistant Secretary for Import Administration, to Holly A. Kuga, Acting Assistant Secretary for Import Administration, dated September 27, 2005, which is hereby adopted by this notice. The issues discussed in the Decision Memo include the likelihood of continuation or recurrence of dumping and the magnitude of the margins likely to prevail if the order were to be revoked. Parties can find a complete discussion of all issues raised in these reviews and the corresponding recommendations in this public memorandum which is on file in room B–099 of the main Commerce building.

In addition, a complete version of the Decision Memo can be accessed directly on the Web at *http://ia.ita.doc.gov/frn*. The paper copy and electronic version of the Decision Memo are identical in content.

Final Results of Review

We determine that revocation of the antidumping duty order on internal–combustion forklift trucks from Japan would be likely to lead to continuation or recurrence of dumping at the following weighted–average percentage margins:

Manufacturers/Exporters/Producers	Weighted Average Margin (percent)
Toyota Motor Corp	47.79
Nissan Motor Co., Ltd	51.33
Komatsu Forklift Co., Ltd	47.50
Sumitomo–Yale Co., Ltd	51.33
Toyo Umpanki Co., Ltd	51.33
Sanki Industrial Co., Ltd	13.65
Kasagi Forklift, Inc	56.81
All Others	39.45

This notice also serves as the only reminder to parties subject to administrative protective orders (''APO'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of the return or destruction of APO materials or conversion to judicial protective orders is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

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

Dated: September 27, 2005.

Holly A. Kuga,

Acting Assistant Secretary for Import Administration.

[FR Doc. E5–5517 Filed 10–5–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–843, A–560–818 and A–570–901]

Initiation of Antidumping Duty Investigations: Certain Lined Paper Products From India, Indonesia, and the People's Republic of China

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

DATES: Effective October 6, 2005.

FOR FURTHER INFORMATION CONTACT: Christopher Hargett (India), Brandon Farlander (Indonesia), or Charles Riggle (People's Republic of China), AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4161, (202) 482–0182 and (202) 482–0650, respectively.

Initiation of Investigations

The Petitions

On September 9, 2005, the Department of Commerce (''the Department'') received Petitions (''the Petitions'') concerning imports of certain lined paper products (''CLPP'') from India, Indonesia, and the People's Republic of China (''PRC'') filed in proper form by the Association of American School Paper Suppliers and its individual members (MeadWestvaco Corporation; Norcom, Inc.; and Top Flight, Inc.) (''Petitioner'') on behalf of the domestic industry and workers

producing CLPP. On September 21, 2005, the Department issued a memo clarifying that the official filing date of the Petitions was September 9, 2005. *See Memorandum from the Team to Acting Deputy Assistant Secretary Barbara Tillman: Decision Memorandum Concerning Filing Date of Petitions*, September 21, 2005. The period of investigation (''POI'') for India and Indonesia is July 1, 2004, through June 30, 2005. The POI for the PRC is January 1, 2005, through June 30, 2005.

In accordance with section 732(b) of the Tariff Act of 1930, as amended (''the Act''), Petitioner alleged that imports of CLPP from India, Indonesia and the PRC are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that such imports are materially injuring and threaten to injure an industry in the United States.

Scope of Investigations

See Scope Appendix.

Comments on Scope of Investigations

During our review of the Petitions, we discussed the scope with Petitioner to ensure that it accurately reflects the product for which the domestic industry is seeking relief. Moreover, as discussed in the preamble to the Department's regulations, we are setting aside a period for interested parties to raise issues regarding product coverage. *See Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997). The Department encourages all interested parties to submit such comments within 20 calendar days of publication of this initiation notice. Comments should be addressed to Import Administration's Central Records Unit in Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230—Attention: James Terpstra. The period of scope consultations is intended to provide the Department with ample opportunity to consider all comments and consult with interested parties prior to the issuance of the preliminary determinations.

Determination of Industry Support for the Petitions

Section 732(b)(1) of the Act requires that a petition be filed by or on behalf of the domestic industry. In order to determine whether a petition has been filed by or on behalf of the industry, the Department, pursuant to section 732(c)(4)(A) of the Act, determines whether a minimum percentage of the relevant industry supports the petition. A petition meets this requirement if the domestic producers or workers who support the petition account for: (i) At least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 732(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the Department shall: (i) Poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A), or (ii) determine industry support using a statistically valid sampling method.

Section 771(4)(A) of the Act defines the ''industry'' as the producers of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The International Trade Commission (''ITC''), which is responsible for determining whether ''the domestic industry'' has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product (section 771(10) of the Act), they do so for different purposes and pursuant to a separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law. *See USEC, Inc.* v. *United States*, 132 F. Supp. 2d 1, 8 (CIT 2001), citing *Algoma Steel Corp. Ltd.* v. *United States*, 688 F. Supp. 639, 644 (1988), *aff'd* 865 F.2d 240 (Fed. Cir. 1989), *cert. denied* 492 U.S. 919 (1989).

Section 771(10) of the Act defines the domestic like product as ''a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.'' Thus, the reference point from which the domestic like product analysis begins is ''the article subject to an investigation,'' (*i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition).

With regard to the domestic like product, Petitioner does not offer a definition of domestic like product distinct from the scope of the investigation. *See Indonesia Initiation Checklist, India Initiation Checklist*, and *PRC Initiation Checklist* at Attachment II (Industry Support). Based on our analysis of the information submitted in the Petitions we have determined there is a single domestic like product, certain lined paper products, which is defined further in the Scope Appendix below, and we have analyzed industry support in terms of that domestic like product.

Our review of the data provided in the Petitions and other information readily available to the Department indicates that Petitioner has established industry support representing at least 25 percent of the total production of the domestic like product; and more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for or opposition to the Petitions, requiring no further action by the Department pursuant to section 732(c)(4)(D) of the Act. In addition, the Department received no opposition to the Petitions from domestic producers of the like product.[1] Therefore, the domestic producers (or workers) who support the Petitions account for at least 25 percent of the total production of the domestic like product, and the requirements of section 732(c)(4)(A)(i) of the Act are met. Furthermore, the domestic producers who support the Petitions account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petitions. Thus, the requirements of section 732(c)(4)(A)(ii) of the Act also are met. Accordingly, the Department determines that the Petitions were filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act. *See Indonesia Initiation Checklist, India Initiation Checklist*, and *PRC Initiation Checklist* at Attachment II (Industry Support).

The Department finds that Petitioner filed the Petitions on behalf of the domestic industry because it is an interested party as defined in section 771(9)(E) and (F) of the Act and it has demonstrated sufficient industry support with respect to the antidumping investigations that it is requesting the Department initiate. *See Indonesia Initiation Checklist, India Initiation Checklist*, and *PRC Initiation Checklist* at Attachment II (Industry Support).

U.S. Price and Normal Value

The following is a description of the allegation of sales at less than fair value

[1] The Department did receive a challenge to industry support in the PRC case. *See Indonesia Initiation Checklist, India Initiation Checklist*, and *PRC Initiation Checklist* at Attachment II (Industry Support).

upon which the Department based its decision to initiate these investigations on India, Indonesia, and the PRC. The sources of data for the deductions and adjustments relating to the U.S. price, home-market price (India and Indonesia), constructed value (India and Indonesia), and the factors of production (PRC only) are also discussed in the country-specific *Initiation Checklist. See Indonesia Initiation Checklist, India Initiation Checklist*, and *PRC Initiation Checklist*. Should the need arise to use any of this information as facts available under section 776 of the Act in our preliminary or final determinations, we will reexamine the information and may revise the margin calculations, if appropriate.

India

Export Price (''EP'')

Petitioner based U.S. price on transaction information from the Port Import-Export Reporting Service (''PIERS'') data intelligence service for two Indian producers/exporters of CLPP. Petitioner based U.S. price on export price because it stated that Indian producers/exporters typically sell either directly to a distributor or retailer in the United States or through an unaffiliated trading company to unrelated distributors or retailers in the United States. In addition, the quoted sales offers are made to the unrelated customers for purchase prior to importation. *See* Petition Volume II at pages 2–4. Petitioner calculated EP based on the sale of notebooks manufactured in India by Kejriwal Paper Ltd. (''Kejriwal'') and the sale of filler paper manufactured in India by Navneet Publications (India) Ltd. (''Navneet''), both free on board (''FOB'') foreign port. In terms of movement charges, Petitioner deducted from U.S. price the domestic freight from the producers' factories to the ports of exportation, insurance fees, port charges, brokerage and handling fees associated with the transfer of goods to an ocean-going vessel, and document preparation fees. *Id.* at page 5 and Exhibit II–11. To be conservative, Petitioner stated that it made no downward adjustment for trading company commissions. *Id.* at page 3.

Normal Value (''NV'')

To calculate NV, Petitioner provided a price quote for one size of packaged and lined filler paper, obtained through foreign market research regarding products manufactured by Navneet and offered for sale in the Indian market. *See* Petition Volume II at pages 10–11. This sale price was offered by Navneet without the involvement of a distributor or agent. Petitioner has not based normal value upon the ex-factory normal value for Kejriwal because the foreign market researcher found that Kejriwal is not involved in the sale of merchandise domestically. Petitioner stated that Kejriwal has dedicated its current production to producing and selling only to the United States market. *See id.*

Price-to-Constructed Value (''CV'') Comparisons

Petitioner has provided information demonstrating reasonable grounds to believe or suspect that sales of CLPP in the home market were made at prices below the fully absorbed cost of production (''COP''), within the meaning of section 773(b) of the Act, and requested that the Department conduct a country-wide sales-below-cost investigation. Pursuant to section 773(b)(3) of the Act, COP consists of the cost of manufacturing (''COM''); selling, general, and administrative expenses (''SG&A''); financial expenses; and packing expenses. Petitioner calculated COM based on their own production experience, adjusted for known differences between costs incurred to produce CLPP in the United States and in India. Petitioner calculated the COM as the sum of raw materials, direct labor, and manufacturing overhead inclusive of energy and depreciation expenses. However, Petitioner calculated the manufacturing overhead ratio by dividing the manufacturing overhead amount inclusive of depreciation expense by the sum of raw materials, direct labor, and energy. Petitioner then applied this ratio to the sum of raw materials and direct labor to calculate the COM. Thus, Petitioner included energy in the denominator of the calculated overhead rate, which is not arithmetically consistent with the raw materials and direct labor to which it was applied. To correct this error, we recalculated the manufacturing overhead ratio by dividing the manufacturing overhead amount inclusive of energy and depreciation expenses by the sum of raw materials and direct labor, and applied this ratio to the sum of direct materials and direct labor to calculate the COM. As a result of changes to overhead and SG&A, the profit ratio also changed.

To calculate SG&A and financial expenses, Petitioner relied upon amounts reported in Navneet's 2004 fiscal year financial statements, an Indian CLPP producer. In calculating the COP, Petitioner erroneously included certain items (*e.g.*, rebates, discounts, transportation expenses etc.) in the SG&A expenses. Therefore, to avoid double counting, we revised the SG&A, inclusive of interest expense ratios, and recalculated the COP. *See India Initiation Checklist.* Based upon a comparison of the prices of the foreign like product in the home market to the recalculated COP of the product, we find reasonable grounds to believe or suspect that sales of the foreign like product were made below the COP, within the meaning of section 773(b)(2)(A)(i) of the Act. Accordingly, the Department is initiating a country-wide cost investigation.

Pursuant to sections 773(a)(4), 773(b) and 773(e) of the Act, Petitioner also based NV for sales in India on CV. Petitioner calculated CV using the same COM, SG&A, and financial expense figures used to compute the Indian home market costs. Consistent with 773(e)(2) of the Act, Petitioner included in CV an amount for profit. *See India Initiation Checklist.*

Indonesia

Export Price

Petitioner based U.S. price on EP, which was based on a sales quote. Petitioner also claims that Indonesian producers typically sell subject merchandise directly to a distributor or retailer in the United States or through an unaffiliated trading company to unrelated distributors or retailers in the United States. Petitioner also asserts that the sales quote it obtained is to unrelated customers for purchase prior to importation. *See* Petition Volume III at page 2. Petitioner claims that it was informed of this price through a common process of auction-style bidding between U.S. producers and Indonesian producers and/or exporters, as well as through monitoring of import manifests as collected through the PIERS service. *See* Petition Volume III at page 3. To be conservative, Petitioner stated that it made no downward adjustment for trading company commissions.

Petitioner calculated an export price based upon transaction information concerning sales of CLPP produced in Indonesia. Because Petitioner believes that PT. Pabrik Kertas Tjiwi Kimia Tbk. (''Tjiwi Kimia'') was the primary manufacturer/exporter of CLPP to the United States during the POI, Petitioner calculated EP based upon sales of a specific type of filler paper sold by Tjiwi Kimia. *See* Petition Volume III at pages 3–4.

Petitioner states that it was unable to obtain sales terms, but based upon its own experience, knows that CLPP is

quoted by Indonesian producers and exporters on a FOB export port basis. Petitioner notes that CLPP is also sold on a per unit basis. From the quoted transaction price, Petitioner deducted domestic freight from the producer's factory to the port of exportation, port charges, and brokerage and handling fees associated with the transfer of goods to an ocean-going vessel along with documentation fees. *See* Petition Volume III at pages 4–5. Although Petitioner also stated that it was deducting inland freight insurance, we see no evidence of this deduction in the Petition. In its September 22, 2005, submission, Petitioner provided a revised price quote, resulting in an adjusted EP. *See* the September 22, 2005, Supplemental Response at III–Suppl–1 and III–Suppl–9. *See Indonesia Initiation Checklist.*

Normal Value

Petitioner calculated NV based upon information on sales or offers of sales in Indonesia of CLPP that are identical or similar to the imported product. *See* Petition at Exhibit III–3. Petitioner used quoted transaction prices of CLPP produced by Tjiwi Kimia and sold or offered for sale to customers in Indonesia. Petitioner notes that there are differences in the physical characteristics between the product sold in the United States and the product sold by Tjiwi Kimia in Indonesia. Petitioner states that these differences relate to paper size. Petitioner has accounted for these differences in sizes through a difference in merchandise adjustment. *See* Petition Volume III at page 10 and at Exhibit III–21. All of the quoted prices for Indonesian home market sales are on a per unit basis. We have revised Petitioner's calculation of the exchange rate to be a simple average of daily exchange rates during the POI in accordance with our standard practice.

Petitioner states that it does not have the information concerning delivery terms in the home market, but has assumed delivery to customers in Jakarta. Petitioner states that it deducted from this price inland freight charges from the Indonesian mill to their home market customers, and a distributor mark-up. In its submission, Petitioner notes that it was not able to obtain actual inland freight expenses incurred by Tjiwi Kimia in shipping to its home market customers, or by what method the subject merchandise was shipped. Therefore, Petitioner has used the average of the truck and rail freight rates as reported by the Department in its investigation of *Carbon and Certain Alloy Steel Wire Rod From Ukraine*. *See* Petition Volume III at page 10–11, and at Exhibit III–5, and 21. Petitioner states that, because neither Tjiwi Kimia, the Asia Pulp and Paper Group, nor their wholesalers, provided a price quote for sales in the home market when contacted, Petitioner instead contacted a distributor. Therefore, Petitioner has deducted a ten percent mark-up to reflect the ''likely mark-up that a customer would likely incur in prices from a distributor.'' *See* Petition Volume III at page 12, and at Exhibit III–13. Petitioner notes that NV was calculated in the manner above to be conservative. *See Indonesia Initiation Checklist.*

Cost of Production

Petitioner has provided information demonstrating reasonable grounds to believe or suspect that sales of CLPP in the home market were made at prices below the fully absorbed COP, within the meaning of section 773(b) of the Act, and requested that the Department conduct a country-wide sales-below-cost investigation. Pursuant to section 773(b)(3) of the Act, COP consists of COM; SG&A; financial expenses; and packing expenses. Petitioner calculated COM based on the production experience of a large U.S. CLPP producer, adjusted for known differences between costs incurred to produce CLPP in the United States and in Indonesia.

Petitioner computed factory overhead costs (which are composed primarily of depreciation expenses) based on Tjiwi Kimia's parent company's 1999 consolidated financial statements. However, the parent company appears to be an integrated paper producer (*i.e.*, manufactures the blank paper in rolls as well as the final CLPP product) and, as a result, appears to maintain a substantial amount of fixed assets for the production of blank paper in rolls. In Petitioner's calculation of COP, the factory overhead ratio (*i.e.*, overhead expenses over the cost of goods sold) was applied to Tjiwi Kimia's total cost of manufacturing, which included the cost of blank paper in rolls, to obtain factory overhead costs. In order to avoid double-counting any factory overhead costs incurred by the paper producer in the paper production process that are included in the price of blank paper, we revised Petitioner's calculation of factory overhead costs by excluding factory overhead from the blank paper costs before applying the factory overhead ratio to COM.

To calculate SG&A and financial expenses, Petitioner relied upon amounts reported in the 1999 consolidated financial statements of Tjiwi Kimia's parent company, Asia Pulp & Paper Co. Ltd.

Based upon a comparison of the prices of the foreign like product in the home market to the calculated COP of the product, we find reasonable grounds to believe or suspect that sales of the foreign like product were made below the COP, within the meaning of section 773(b)(2)(A)(i) of the Act. Accordingly, the Department is initiating a country-wide cost investigation. *See Indonesia Initiation Checklist.*

Normal Value based on Constructed Value

Pursuant to sections 773(a)(4), 773(b) and 773(e) of the Act, Petitioner also based NV on CV. We calculated CV using the same COM, SG&A, and financial expense figures used to compute the COP. Petitioner did not include an amount for profit in the calculation of CV, as permitted by 773(e)(2) of the Act, because the most recent data available (*i.e.*, the parent company's 1999 consolidated financial statements) reflected a net loss. Therefore, Petitioner did not adjust CV to account for profit. Should the need arise to use the profit rate provided by Petitioner as facts available under section 776 of the Act in our preliminary or final determination, we will re-examine the information and may, if appropriate, revise the CV calculations. *See Indonesia Initiation Checklist.*

PRC

Export Price

Petitioner based its U.S. prices on information regarding Chinese quoted offer prices as relayed by a U.S. customer. Petitioner based U.S. price on export price because it stated that Indian producers/exporters typically sell either directly to a distributor or retailer in the United States or through an unaffiliated trading company to unrelated purchasers in the United States. The Department deducted from these prices the costs associated with exporting the product, including foreign port expense, inland insurance, and brokerage and handling. *See PRC Initiation Checklist.*

Normal Value

Petitioner stated that the PRC is a non-market economy (''NME'') and no determination to the contrary has yet been made by the Department. In previous investigations, the Department has determined that the PRC is an NME. *See Notice of Final Determination of Sales at Less Than Fair Value: Magnesium Metal from the People's*

Republic of China, 70 FR 9037 (February 24, 2005), *Notice of Final Determination of Sales at Less Than Fair Value: Certain Tissue Paper Products from the People's Republic of China*, 70 FR 7475 (February 14, 2005), and *Notice of Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp from the People's Republic of China*, 69 FR 70997 (December 8, 2004). In accordance with section 771(18)(C)(i) of the Act, the presumption of NME status remains in effect until revoked by the Department. The presumption of NME status for the PRC has not been revoked by the Department and remains in effect for purposes of the initiation of this investigation. Accordingly, the NV of the product is appropriately based on factors of production valued in a surrogate market-economy country in accordance with section 773(c) of the Act. In the course of this investigation, all parties will have the opportunity to provide relevant information related to the issues of the PRC's NME status and the granting of separate rates to individual exporters. Petitioner selected India as the surrogate country arguing that, pursuant to section 773(c)(4) of the Act, India is an appropriate surrogate because it is a market-economy country that is at a comparable level of economic development to the PRC and is a significant producer and exporter of CLPP. *See* Petition Volume IV at pages 10–12. Based on the information provided by Petitioner, we believe that its use of India as a surrogate country is appropriate for purposes of initiating this investigation. After the initiation of the investigation, we will solicit comments regarding surrogate country selection. Also, pursuant to 19 CFR 351.301(c)(3)(i) of the Department's regulations, interested parties will be provided an opportunity to submit publicly available information to value factors of production within 40 days after the date of publication of the preliminary determination.

Petitioner explained that the production process for CLPP involves drawing out large rolls of paper (*i.e.*, ''web paper''), printing lines with a press machine, cutting it to desired size, and perforating the paper as necessary. *See* Petition Volume IV at 13. Petitioner stated that manufacturing of CLPP is extremely similar regardless of location and therefore its use of the U.S. producer's product-specific production costs and/or consumption rates represents the best information reasonably available to Petitioner at this time. *See* Petition Volume IV at 13–14. In building up the factors of production, Petitioner started with blank paper in rolls as the primary input in finished CLPP.

Petitioner provided a dumping margin calculation using the Department's NME methodology as required by 19 CFR 351.202(b)(7)(i)(C). *See* Petition Volume IV at Exhibit IV–20; and September 22, 2005, First Supplement Exhibit IV–Supp–9; September 23, 2005, at Exhibit IV–Supp–2–6; and September 27, 2005, at Exhibit IV–Supp–3–10. To determine the quantities of inputs used by the PRC producers to produce 150-count filler paper and 70-count spiral-bound notebooks, Petitioner relied on the production experience and actual consumption rates of a U.S. CLPP producer for the period January 2005 through June 2005. For composition books, Petitioner relied on its understanding of the ''step and repeat'' manufacturing process to estimate usage rates for the period July 1, 2004, through June 30, 2005.

In accordance with section 773(c)(4) of the Act, Petitioner valued factors of production, where possible, on reasonably available, public surrogate country data. To value certain factors of production, Petitioner used *Monthly Statistics of the Foreign Trade of India*, as published by the Directorate General of Commercial Intelligence and Statistics of the Ministry of Commerce and Industry, Government of India. For more information see the *PRC Initiation Checklist.*

For inputs valued in Indian rupees and not contemporaneous with the POI, Petitioner used information from the wholesale price indices in India as published by the International Monetary Fund in the *International Financial Statistics* to determine the appropriate adjustments for inflation. In addition, Petitioner made currency conversions, where necessary, based on the average rupee/U.S. dollar exchange rate for the POI as reported on the Department's Web site. The Department recalculated Petitioner's exchange rate for the POI to be a simple daily average. *See PRC Initiation Checklist.*

The Department calculates and publishes the surrogate values for labor to be used in NME cases on its Web site. Therefore, to value labor, Petitioner used a labor rate of $0.85 per hour, in accordance with the Department's regulations. *See* 19 CFR 351.408(c)(3) and the September 27, 2005, submission at page 8. Petitioner stated that electricity was recorded in overhead and did not include packing costs. *See* Petition at Exhibit IV–13.

Petitioner calculated surrogate financial ratios (overhead, SG&A, and profit) using information obtained from the Navneet 2003–2004 Annual Report. *See* Petition Volume IV at page 19–21 and Exhibit IV–19. Navneet is an Indian producer of CLPP. In this case, the Department has accepted the financial information from the Navneet financial statements for the purposes of initiation, because these data appear to be the best information on such expenses currently available to Petitioner. However, the Department identified certain errors in Petitioner's calculations and has corrected these surrogate financial ratios as discussed below. Petitioner calculated the COM as the sum of raw materials, direct labor, and manufacturing overhead expenses inclusive of energy and depreciation expenses. However, Petitioner calculated the manufacturing overhead ratio by dividing the manufacturing overhead amount, as discussed above, by the sum of raw materials, direct labor, and energy. Petitioner then applied this ratio to the sum of raw materials and direct labor to calculate the COM. Thus, Petitioner erred in calculating the overhead amount included in the COM, by including energy in the denominator of the calculated overhead rate and then applying this rate to the sum of materials and direct labor. To correct this error, we recalculated the manufacturing overhead ratio by dividing the manufacturing overhead amount (inclusive of energy and depreciation expenses) by the sum of raw materials and direct labor, and applied this ratio to the sum of raw materials and direct labor to calculate the COM.

To calculate the SG&A ratio and financial expenses, Petitioner relied upon amounts reported in Navneet's 2004 fiscal year financial statements. In calculating the SG&A ratio (which includes the interest expense ratio), Petitioner erroneously included certain items such as rebates, discounts, transportation expenses, etc. These items are generally accounted for elsewhere in our calculations. Therefore, to avoid double counting, we revised the SG&A ratio to exclude these items. As a result of these changes in the overhead and SG&A ratios, the profit ratio also changed. *See PRC Initiation Checklist.*

The Department's practice in NME proceedings is to add to surrogate values based on import statistics a surrogate freight cost calculated using the shorter of the reported distance from the domestic supplier to the factory or the distance from the nearest seaport to the factory. This adjustment is in accordance with the Court of Appeals for the Federal Circuit's decision in

Sigma Corp. v. *United States*, 117 F. 3d 1401, 1408 (Fed. Cir. 1997). Here, Petitioner was unable to obtain the actual supplier distances to the Chinese producer, and did not adjust its NV calculation to include a freight expense for the raw material inputs. *See* Petition Volume IV at pages 15–16 and Exhibit IV–15. Therefore, we did not include the freight-in expense from Navneet's financial statement in the buildup of materials costs for purposes of calculating the surrogate financial ratios.

Fair Value Comparisons

Based on the data provided by Petitioner, there is reason to believe that imports of CLPP from India, Indonesia and the PRC are being, or are likely to be, sold in the United States at less than fair value. Based on comparisons of EP (method derived from one price quote) to NV, calculated in accordance with section 773(a) of the Act, and of EP to CV, the range of the revised estimated dumping margins for CLPP from Indonesia is 77.06 percent to 118.63 percent. Based on comparisons of EP to NV, calculated in accordance with section 773(c) of the Act, the estimated revised weighted-average dumping margin for CLPP from the PRC is 258.21 percent. The estimated revised dumping margins for India based on a comparison of EP to recalculated CV ranged from 181.68 percent to 215.93 percent.

Allegations and Evidence of Material Injury and Causation

With regard to India, Indonesia and the PRC, Petitioner alleges that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of the individual and cumulated imports of the subject merchandise sold at less than NV. Petitioner contends that the industry's injured condition is illustrated by the decline in customer base, market share, domestic shipments, prices and profit. We have assessed the allegations and supporting evidence regarding material injury and causation, and we have determined that these allegations are properly supported by adequate evidence and meet the statutory requirements for initiation. *See Indonesia Initiation Checklist, India Initiation Checklist*, and *PRC Initiation Checklist* at Attachment III (Injury).

Separate Rates and Quantity and Value Questionnaire

The Department recently modified the process by which exporters and producers may obtain separate-rate status in NME investigations. *See* Policy Bulletin 05.1: Separate-Rates Practice and Application of Combination Rates in Antidumping Investigations Involving Non-Market Economy Countries, (April 5, 2005), available on the Department's Web site at *http://ia.ita.doc.gov/policy/bull05–1.pdf*. The process now requires the submission of a separate-rate status application. Based on our experience in processing the separate rates applications in the antidumping duty investigations of *Artists Canvas* and *Diamond Sawblades* (*see Initiation of Antidumping Duty Investigation: Certain Artist Canvas From the People's Republic of China*, 70 FR 21996, 21999 (April 28, 2005), and *Initiation of Antidumping Duty Investigations: Diamond Sawblades and Parts Thereof from the People's Republic of China and the Republic of Korea*, 70 FR 35623, 35629 (June 21, 2005)), we have modified the application for this investigation to make it more administrable and easier for applicants to complete. The specific requirements for submitting the separate-rates application in this investigation are outlined in detail in the application itself, which will be available on the Department's Web site at *http://ia.ita.doc.gov/* on the date of publication of this initiation notice in the **Federal Register**. Please refer to this application for all instructions.

Use of Combination Rates in an NME Investigation

The Department will calculate combination rates for certain respondents that are eligible for a separate rate in this investigation. The *Separate Rates and Combination Rates Bulletin*, states:

> {w}hile continuing the practice of assigning separate rates only to exporters, all separate rates that the Department will now assign in its NME investigations will be specific to those producers that supplied the exporter during the period of investigation. Note, however, that one rate is calculated for the exporter and all of the producers which supplied subject merchandise to it during the period of investigation. This practice applies both to mandatory respondents receiving an individually calculated separate rate as well as the pool of non-investigated firms receiving the weighted-average of the individually calculated rates. This practice is referred to as the application of ''combination rates'' because such rates apply to specific combinations of exporters and one or more producers. The cash-deposit rate assigned to an exporter will apply only to merchandise both exported by the firm in question and produced by a firm that supplied the exporter during the period of investigation.

Separate Rates and Combination Rates Bulletin, at page 6.

Initiation of Antidumping Investigations

Based upon our examination of the Petitions on CLPP, we find that these Petitions meet the requirements of section 732 of the Act. Therefore, we are initiating antidumping duty investigations to determine whether imports of CLPP are being, or are likely to be, sold in the United States at less than fair value. Unless postponed, we will make our preliminary determinations no later than 140 days after the date of these initiations.

Distribution of Copies of the Petitions

In accordance with section 732(b)(3)(A) of the Act, copies of the public versions of the respective Petition has been provided to the Government of India, Government of Indonesia, and the Government of the PRC.

International Trade Commission Notification

We have notified the ITC of our initiations, as required by section 732(d) of the Act.

Preliminary Determination by the ITC

The ITC will preliminarily determine, within 25 days after the date on which it receives notice of these initiations, whether there is a reasonable indication that imports of CLPP from India, Indonesia and the PRC are causing material injury, or threatening to cause material injury, to a U.S. industry. *See* section 733(a)(2) of the Act. A negative ITC determination will result in the investigations being terminated; otherwise, these investigations will proceed according to statutory and regulatory time limits.

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

Dated: September 29, 2005.

Barbara E. Tillman,

Acting Assistant Secretary for Import Administration.

Scope Appendix

Scope of the Investigation

The scope of this investigation includes certain lined paper products, typically school supplies,[2] composed of or including paper that incorporates straight horizontal and/or vertical lines on ten or more paper sheets,[3] including but not limited to such products as single- and multi-subject notebooks,

[2] For purposes of this scope definition, the actual use of or labeling these products as school supplies or non-school supplies is not a defining characteristic.

[3] There shall be no minimum page requirement for looseleaf filler paper.

composition books, wireless notebooks, looseleaf or glued filler paper, graph paper, and laboratory notebooks, and with the smaller dimension of the paper measuring 6 inches to 15 inches (inclusive) and the larger dimension of the paper measuring 8¾ inches to 15 inches (inclusive). Page dimensions are measured size (not advertised, stated, or ''tear-out'' size), and are measured as they appear in the product (*i.e.*, stitched and folded pages in a notebook are measured by the size of the page as it appears in the notebook page, not the size of the unfolded paper). However, for measurement purposes, pages with tapered or rounded edges shall be measured at their longest and widest points. Subject lined paper products may be loose, packaged or bound using any binding method (other than case bound through the inclusion of binders board, a spine strip, and cover wrap). Subject merchandise may or may not contain any combination of a front cover, a rear cover, and/or backing of any composition, regardless of the inclusion of images or graphics on the cover, backing, or paper. Subject merchandise is within the scope of this petition whether or not the lined paper and/or cover are hole punched, drilled, perforated, and/or reinforced. Subject merchandise may contain accessory or informational items including but not limited to pockets, tabs, dividers, closure devices, index cards, stencils, protractors, writing implements, reference materials such as mathematical tables, or printed items such as sticker sheets or miniature calendars, if such items are physically incorporated, included with, or attached to the product, cover and/or backing thereto.

Specifically excluded from the scope of this petition are: unlined copy machine paper; writing pads with a backing (including but not limited to products commonly known as ''tablets,'' ''note pads,'' ''legal pads,'' and ''quadrille pads''), provided that they do not have a front cover (whether permanent or removable). This exclusion does not apply to such writing pads if they consist of hole-punched or drilled filler paper; three-ring or multiple-ring binders, or notebook organizers incorporating such a ring binder provided that they do not include subject paper; index cards; printed books and other books that are case bound through the inclusion of binders board, a spine strip, and cover wrap; newspapers; pictures and photographs; desk and wall calendars and organizers (including but not limited to such products generally known as ''office planners,'' ''time books,'' and ''appointment books''); telephone logs; address books; columnar pads & tablets, with or without covers, primarily suited for the recording of written numerical business data; lined business or office forms, including but not limited to: preprinted business forms, lined invoice pads and paper, mailing and address labels, manifests, and shipping log books; lined continuous computer paper; boxed or packaged writing stationery (including but not limited to products commonly known as ''fine business paper,'' ''parchment paper,'' and ''letterhead''), whether or not containing a lined header or decorative lines; Stenographic pads (''steno pads''), Gregg ruled,[4] measuring 6 inches by 9 inches;

Also excluded from the scope of these investigations are the following trademarked products: Fly* lined paper products: A notebook, notebook organizer, loose or glued note paper, with papers that are printed with infrared reflective inks and readable only by a Fly* pen-top computer. The product must bear the valid trademark Fly*.[5] Zwipes*: A notebook or notebook organizer made with a blended polyolefin writing surface as the cover and pocket surfaces of the notebook, suitable for writing using a specially-developed permanent marker and erase system (known as a Zwipes* pen). This system allows the marker portion to mark the writing surface with a permanent ink. The eraser portion of the marker dispenses a solvent capable of solubilizing the permanent ink, allowing the ink to be removed. The product must bear the valid trademark Zwipes*.[6] FiveStar*Advance*: A notebook or notebook organizer bound by a continuous spiral, or helical, wire and with plastic front and rear covers made of a blended polyolefin plastic material joined by 300 denier polyester, coated on the backside with PVC (poly vinyl chloride) coating, and extending the entire length of the spiral or helical wire. The polyolefin plastic covers are of specific thickness; front cover is .019 inches (within normal manufacturing tolerances) and rear cover is .028 inches (within normal manufacturing tolerances). Integral with the stitching that attaches the polyester spine covering, is captured both ends of a1″ wide elastic fabric band. This band is located 2⅜″ from the top of the front plastic cover and provides pen or pencil storage. Both ends of the spiral wire are cut and then bent backwards to overlap with the previous coil but specifically outside the coil diameter but inside the polyester covering. During construction, the polyester covering is sewn to the front and rear covers face to face (outside to outside) so that when the book is closed, the stitching is concealed from the outside. Both free ends (the ends not sewn to the cover and back) are stitched with a turned edge construction. The flexible polyester material forms a covering over the spiral wire to protect it and provide a comfortable grip on the product. The product must bear the valid trademarks FiveStar*Advance*.[7]

FiveStar Flex*: A notebook, a notebook organizer, or binder with plastic polyolefin front and rear covers joined by 300 denier polyester spine cover extending the entire length of the spine and bound by a 3-ring plastic fixture. The polyolefin plastic covers are of a specific thickness; front cover is .019 inches (within normal manufacturing tolerances) and rear cover is .028 inches (within normal manufacturing tolerances). During construction, the polyester covering is sewn to the front cover face to face (outside to outside) so that when the book is closed, the stitching is concealed from the outside. During construction, the polyester cover is sewn to the back cover with the outside of the polyester spine cover to the inside back cover. Both free ends (the ends not sewn to the cover and back) are stitched with a turned edge construction. Each ring within the fixture is comprised of a flexible strap portion that snaps into a stationary post which forms a closed binding ring. The ring fixture is riveted with six metal rivets and sewn to the back plastic cover and is specifically positioned on the outside back cover. The product must bear the valid trademark FiveStar Flex*.[8]

Merchandise subject to this investigation is typically imported under headings 4820.10.2050, 4810.22.5044, 4811.90.9090 of the Harmonized Tariff Schedule of the United States (HTSUS).[9] The tariff classifications are provided for

[4] ''Gregg ruling'' consists of a single- or double-margin vertical ruling line down the center of the page. For a six-inch by nine-inch stenographic pad, the ruling would be located approximately three inches from the left of the book.

[5] Products found to be bearing an invalidly licensed or used trademark are not excluded from the scope.

[6] Products found to be bearing an invalidly licensed or used trademark are not excluded from the scope.

[7] Products found to be bearing an invalidly licensed or used trademark are not excluded from the scope.

[8] Products found to be bearing an invalidly licensed or used trademark are not excluded from the scope.

[9] During the investigation additional HTS codes may be identified.

convenience and U.S. Customs and Border Protection purposes; however, the written description of the scope of the investigation is dispositive.

[FR Doc. E5–5515 Filed 10–5–05; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–427–818]

Low Enriched Uranium From France; Extension of Time Limit for the Preliminary Results of the Antidumping Duty Administrative Review

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

EFFECTIVE DATE: October 6, 2005.

FOR FURTHER INFORMATION CONTACT: Mark Hoadley or Myrna Lobo, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington DC 20230; telephone: (202) 482–3148 or (202) 482–2371.

Background

On March 23, 2005, the Department of Commerce (''the Department'') published in the **Federal Register** the notice of initiation of the administrative review of the antidumping duty order on low enriched uranium from France, covering the period February 1, 2004, through January 31, 2005. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 70 FR 14643 (March 23, 2005).

Extension of Time Limits for Preliminary Results

Section 751(a)(3)(A) of the Tariff Act of 1930 (''the Act'') requires the Department to issue the preliminary results of an administrative review within 245 days after the last day of the anniversary month of an antidumping duty order for which a review is requested and issue the final results within 120 days after the date on which the preliminary results are published. However, if the Department finds it is not practicable to complete the review within the time period, section 751(a)(3)(A) of the Act allows the Department to extend these deadlines to a maximum of 365 days and 180 days, respectively.

Due to the complex nature of the case and the need to issue supplemental questionnaires, the Department finds that it is not practicable to complete the preliminary results in this administrative review of low enriched uranium from France by October 31, 2005. Therefore, the Department is extending the time limit for completion of the preliminary results until no later than February 28, 2006, in accordance with section 751(a)(3)(A) of the Act. The deadline for the final results of the administrative review continues to be 120 days after the publication of the preliminary results.

We are issuing and publishing this notice in accordance with sections 751(a)(3)(A) and 777(i)(1) of the Act.

Dated: September 29, 2005.

Barbara E. Tillman,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 05–20162 Filed 10–5–05; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE.

International Trade Administration

A–570–851

Notice of Extension of the Preliminary Results of the Administrative Antidumping Duty Review: Certain Preserved Mushrooms from the People's Republic of China

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

EFFECTIVE DATE: October 6, 2005.

FOR FURTHER INFORMATION CONTACT: Irene Gorelik or Paul Walker, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–6905 and (202) 482–0413, respectively.

SUPPLEMENTARY INFORMATION:

Background

On February 19, 1999, the Department published in the **Federal Register** an amended final determination and antidumping duty order on certain preserved mushrooms from the PRC. *See Notice of Amendment of Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Preserved Mushrooms from the People's Republic of China*, 64 FR 8308 (February 19, 1999).

On February 1, 2005, the Department published a *Notice of Opportunity to Request Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation*, 70 FR 5136. On February 28, 2005, the Petitioner requested, in accordance with section 751(a) of the Tariff Act of 1930 (''the Act'') and 19 CFR 351.213(b), an administrative review of the antidumping duty order on certain preserved mushrooms from the PRC for thirty companies covering the period February 1, 2004, through January 31, 2005. On February 7, 2005, and February 25, 2005, four Chinese companies, Gerber Food (Yunnan) Co., Ltd., Green Fresh Foods (Zhangzhou) Co., Ltd., Primera Harvest (Xiangfan) Co., Ltd., and Raoping Yucun Canned Foods Factory requested an administrative review. The Department notes that these four companies were also included in the Petitioner's February 28, 2005, request for an administrative review of thirty companies.

On March 23, 2005, the Department initiated an administrative review of thirty Chinese companies. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 70 FR 14643 (March 23, 2005). On June 29, 2005, the Petitioner filed a timely letter withdrawing its request for review of twenty–five companies. On July 21, 2005, the Department rescinded the reviews for the twenty–five companies. *See Certain Preserved Mushrooms from the People's Republic of China: Notice of Partial Rescission of Antidumping Duty Administrative Review*, 70 FR 42038 (July 21, 2005).

Extension of Time Limits for Preliminary Results

Pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (''the Act''), the Department shall issue preliminary results in an administrative review of an antidumping duty order within 245 days after the last day of the anniversary month of the date of publication of the order. The Act further provides, however, that the Department may extend that 245-day period to 365 days if it determines it is not practicable to complete the review within the foregoing time period. The Department finds that it is not practicable to complete the preliminary results within the originally anticipated time limit of October 31, 2005 due to complex respondent specific issues of production processes and sales. The Department has deemed it necessary to provide additional time to conduct a thorough analysis prior to issuing the preliminary results.

Section 751(a)(3)(A) of the Act and section 351.213(h)(2) of the Department's regulations allow the Department to extend the deadline for

the preliminary results to a maximum of 365 days from the last of the anniversary month of the order. Accordingly, the Department is extending the time limit for the completion of the preliminary results until no later than February 28, 2006. The deadline for the final results of this administrative review continues to be 120 days after the publication of the preliminary results, unless extended.

This notice is issued and published in accordance with section 751(a)(3)(A) of the Act.

Dated: September 29, 2005.

Barbara E. Tillman,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. E5–5516 Filed 10–5–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–804]

Sparklers From the People's Republic of China; Notice of Final Results of Expedited Sunset Review of Antidumping Duty Order

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

SUMMARY: On June 1, 2005, the Department of Commerce (''the Department'') initiated the sunset review of the antidumping duty order on sparklers from the People's Republic of China (''China'') pursuant to section 751(c) of the Tariff Act of 1930, as amended (''the Act''). On the basis of Notices of Intent to Participate, adequate substantive responses filed on behalf of domestic interested parties, and lack of response from respondent interested parties, the Department conducted an expedited (120-day) sunset review. As a result of this sunset review, the Department finds that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping. The dumping margins likely to prevail if the order were revoked are identified in the *Final Results of Review* section of this notice.

DATES: October 6, 2005.

FOR FURTHER INFORMATION: Maureen Flannery, AD/CVD Operations, Office 8, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–3020.

SUPPLEMENTARY INFORMATION:

Background

On June 1, 2005, the Department published the notice of initiation of the sunset review of the antidumping duty order on sparklers from China. *See Initiation of Five-Year (''Sunset'') Reviews*, 70 FR 31423 (June 1, 2005). On June 8, 2005 and June 16, 2005, the Department received Notices of Intent to Participate from Diamond Sparkler Manufacturing Company and Elkton Sparkler Company (collectively ''domestic interested parties'') within the deadline specified in section 351.218(d)(1)(i) of the Department's regulations. The domestic interested parties claimed interested party status under section 771(9)(C) of the Act, as a manufacturer, producer, or wholesaler in the United States of a domestic like product. On June 22, 2005, and July 1, 2005, the Department received complete substantive responses from the domestic interested parties within the deadline specified in section 351.218(d)(3)(i) of the Department's regulations. We did not receive a response from any respondent interested party to this proceeding. As a result, pursuant to section 751(c)(3)(B) of the Act and section 351.218(e)(1)(ii)(C)(2) of the Department's regulations, the Department conducted an expedited review of this order.

Scope of the Order

The products subject to this order are fireworks each comprising a cut-to-length wire, one end of which is coated with a chemical mix that emits bright sparks while burning. Sparklers are currently classified under subheadings 3604.10.10.00, 3604.10.90.10, and 3604.10.90.50 of the Harmonized Tariff Schedule of the United States (''HTSUS''). Sparklers were formerly classified under HTSUS subcategory 3604.10.00. The Department has reviewed current categories and has determined that sparklers are currently classified in the above subcategories. Although HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under the order is dispositive.

Analysis of Comments Received

All issues raised in this review are addressed in the ''Issues and Decision Memorandum'' (''Decision Memo'') from Barbara E. Tillman, Acting Deputy Assistant Secretary for Import Administration, to Joseph A. Spetrini, Acting Assistant Secretary for Import Administration, dated September 29, 2005, which is hereby adopted by this notice. The issues discussed in the Decision Memo include the likelihood of continuation or recurrence of dumping and the magnitude of the margins likely to prevail if the order were revoked. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in room B–099 of the main Commerce building.

In addition, a complete version of the Decision Memo can be accessed directly on the Web at *http://ia.ita.doc.gov/frn/index.html*, under the heading ''October 2005.'' The paper copy and electronic version of the Decision Memo are identical in content.

Final Results of Review

We determine that revocation of the antidumping duty order on sparklers from China would likely lead to continuation or recurrence of dumping at the following weighted-average percentage margins:

Manufacturers/Exporters/Producers	Weighted average margin (percent)
Guangxi Native Produce Import & Export Corporation, Behai Fireworks and Firecrackers Branch	41.75
Hunan Provincial Firecrackers & Fireworks Import & Export Corporation	93.54
Jiangxi Native Produce Import & Export Corporation, Guangzhou Fireworks Company	93.54
China-wide rate	93.54

This notice also serves as the only reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with section 351.305 of the Department's regulations. Timely notification of the return or destruction

of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

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

Dated: September 29, 2005.

Barbara E. Tillman,

Acting Assistant Secretary for Import Administration.

[FR Doc. E5–5513 Filed 10–5–05; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–601]

Tapered Roller Bearings from the People's Republic of China: Notice of Final Results of Expedited Sunset Review of Antidumping Duty Order

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

SUMMARY: On June 1, 2005, the Department of Commerce (''the Department'') initiated the sunset review of the antidumping duty order on tapered roller bearings from the People's Republic of China (''China'') pursuant to section 751(c) of the Tariff Act of 1930, as amended (''the Act''). On the basis of a Notice of Intent to Participate, adequate substantive responses filed on behalf of domestic interested parties, and lack of response from respondent interested parties, the Department conducted an expedited (120-day) sunset review. As a result of this sunset review, the Department finds that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping. The dumping margins likely to prevail if the order were revoked are identified in the *Final Results of Review* section of this notice.

DATES: October 6, 2005.

FOR FURTHER INFORMATION: Maureen Flannery, AD/CVD Operations, Office 8, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–3020.

SUPPLEMENTARY INFORMATION:

Background

On June 1, 2005, the Department published the notice of initiation of the sunset review of the antidumping duty order on tapered roller bearings from China. *See Initiation of Five-Year (''Sunset'') Reviews*, 70 FR 31423 (June 1, 2005). On June 16, 2005, the Department received a joint Notice of Intent to Participate from RBC Bearings and The Timken Company (collectively ''domestic interested parties'') within the deadline specified in section 351.218(d)(1)(i) of the Department's regulations. The domestic interested parties claimed interested party status under section 771(9)(C) of the Act, as manufacturers, producers, or wholesalers in the United States of a domestic like product. On July 1, 2005, the Department received a complete substantive response from the domestic interested parties within the deadline specified in section 351.218(d)(3)(i) of the Department's regulations. The Department did not receive a response from any respondent interested party to this proceeding. As a result, pursuant to section 751(c)(3)(B) of the Act and section 351.218(e)(1)(ii)(C)(2) of the Department's regulations, the Department conducted an expedited review of this order.

Scope of the Order

Merchandise covered by this order is tapered roller bearings from China; flange, take up cartridge, and hanger units incorporating tapered roller bearings; and tapered roller housings (except pillow blocks) incorporating tapered rollers, with or without spindles, whether or not for automotive use. This merchandise is currently classifiable under the Harmonized Tariff Schedule of the United States (''HTSUS'') item numbers 8482.20.00, 8482.91.00.50, 8482.99.30, 8483.20.40, 8483.20.80, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.80, 8708.99.80.15, and 8708.99.80.80. Although the HTSUS item numbers are provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

Analysis of Comments Received

All issues raised in this review are addressed in the ''Issues and Decision Memorandum'' (''Decision Memo'') from Barbara E. Tillman, Acting Deputy Assistant Secretary for Import Administration, to Joseph A. Spetrini, Acting Assistant Secretary for Import Administration, dated September 29, 2005, which is hereby adopted by this notice. The issues discussed in the Decision Memo include the likelihood of continuation or recurrence of dumping and the magnitude of the margins likely to prevail if the order were revoked. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in room B–099 of the main Commerce building.

In addition, a complete version of the Decision Memo can be accessed directly on the Web at *http://ia.ita.doc.gov/frn/index.html*, under the heading ''October 2005.'' The paper copy and electronic version of the Decision Memo are identical in content.

Final Results of Review

We determine that revocation of the antidumping duty order on tapered roller bearings from China would likely lead to continuation or recurrence of dumping at the following weighted-average percentage margins:

Manufacturers/Exporters/Producers	Weighted average margin (percent)
Zheijiang Changshan Changhe Bearing Co.	0.00
China National Machinery Import & Export Corp.	0.03
Zheijiang Wanxiang Group	0.03
Zheijiang Machinery Import & Export Corp.	0.11
Luoyang Bearing Corporation	3.20
Premier Bearing & Equipment, Ltd.	5.43
Liaoning Mec Group, Ltd.	9.72
China National Machinery and Equipment Import & Export Corp.	29.40
China-wide Rate	29.40

This notice also serves as the only reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with section 351.305 of the Department's regulations. Timely notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

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

Dated: September 29, 2005.

Barbara E. Tillman,

Acting Assistant Secretary for Import Administration.

[FR Doc. E5–5514 Filed 10–5–05; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Minority Business Development Agency

[Docket No: 050929252–5252–01]

White House Initiative on Asian Americans and Pacific Islanders, President's Advisory Commission on Asian Americans and Pacific Islanders

AGENCY: Minority Business Development Agency, Department of Commerce.

ACTION: Notice of meeting.

SUMMARY: The Minority Business Development Agency (MBDA) publishes this notice to announce that the President's Advisory Commission on Asian Americans and Pacific Islanders (Commission) will hold a public meeting to deliberate the draft of the Commission's Report to the President. This report was compiled using data acquired from the Commission's site visits to Kansas City, MO; Los Angeles, CA; Houston, TX; Raleigh, NC; Chicago, IL; New York, NY and technical assistance conferences in order to fulfill the mandates of Executive Order 13339 on ways to provide equal economic opportunities for full participation of Asian American and Pacific Islander businesses where they may be underserved.

DATES: The public meeting will be held on Wednesday, October 19, 2005 from 8 a.m.–5:30 p.m. PST. For members of the public who are interested in providing comments to the Commission, please submit your written requests by October 14, 2005. Requests for special assistance, such as sign language interpretation or other reasonable accommodations, should be submitted to Mr. Erik Wang (*See* **FOR FURTHER INFORMATION CONTACT**) no later than October 14, 2005.

ADDRESSES: The public meeting will be held on Wednesday, October 19, 2005 at: Oakland Asian Cultural Center, 388 Ninth Street, Oakland, CA 94607.

For members of the public who are interested in addressing the Commission, please submit your request to Mr. Erik Wang, Office of the White House Initiative on AAPIs, Herbert C Hoover Building, 1401 Constitution Avenue, NW., Room 5092, Washington, DC 20230, or by fax to (202) 219–8809.

FOR FURTHER INFOMRATION CONTACT: For additional information about the Commission or the public meeting, please contact: Mr. Erik Wang, Office of the White House Initiative on AAPIs, Herbert C Hoover Building, 1401 Constitution Avenue, NW., Room 5092, Washington, DC 20230, Telephone (202) 482–2204.

SUPPLEMENTARY INFORMATION:

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the Commission's intent to conduct a public meeting on October 19, 2005. Agenda items will include, but will not be limited to: discussion of the Commission's 2006 Strategic Plan; discussion of the Commission's Report to the President; administrative tasks; upcoming events; and comments from the public.

The purpose of the Commission is to advise and make recommendations to the President on ways to provide equal economic opportunities for full participation of Asian American and Pacific Islander businesses in our free market economy where they may be underserved and thus, improving the quality of life for approximately 14.5 million Asian Americans and Pacific Islanders living in the United States and the U.S.-associated Pacific Island jurisdictions.

Requests to address the Commission must be made in writing and should include the name, address, telephone number and business or professional affiliation of the interested party. Individuals or groups addressing similar issues are encouraged to combine comments and make their request to address the Commission through a single representative. The allocation of time for remarks will be adjusted to accommodate the level of expressed interest. Written requests must be mailed or faxed to The Office of the White House Initiative on AAPIs by October 14, 2005 (See **ADDRESSES**). Anyone who requires special assistance, such as sign language interpretation or other reasonable accommodations, should contact Mr. Erik Wang no later than October 10, 2005 (*See* **FOR FURTHER INFORMATION CONTACT**). This meeting is open to the public.

Dated: October 3, 2005.

Edith McCloud,

Associate Director for Management.

[FR Doc. 05–20134 Filed 10–5–05; 8:45 am]

BILLING CODE 3510–21–U

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 100305C]

New England Fishery Management Council; Public Meeting

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

ACTION: Notice; advisory panel meeting.

SUMMARY: The New England Fishery Management Council's (Council) Habitat Advisory Panel will meet to consider actions affecting New England fisheries in the exclusive economic zone (EEZ).

DATES: The meeting will be held on Wednesday, October 26, 2005, from 10 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at the Holiday Inn, 291 Jones Road, Falmouth, MA 02540; Phone:(508) 540–2000.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; telephone: (978)465–0492.

SUPPLEMENTARY INFORMATION: The items of discussion in the panel's agenda is as follows:

Agenda for Wednesday, October 26, 2005

The Advisory Panel will discuss items relative to the development of the Council's Essential Fish Habitat Omnibus Amendment #2 action:

1. Briefing on and review of Habitat Area of Particular Concern proposals
2. Final review of Advisory Panel gear description document3.

Discussion of a potential gear description workshop

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

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: October 3, 2005.

Emily Menashes,

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

[FR Doc. E5–5486 Filed 10–5–05; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 100305B]

Pacific 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 Pacific Fishery Management Council's (Council) Salmon Advisory Subpanel (SAS) will hold a work session by telephone conference, which is open to the public, to develop recommendations for the November Council meeting.

DATES: The telephone conference will be held Thursday, October 27, from 1 p.m. to 4 p.m.

ADDRESSES: A listening station will be available at the Pacific Fishery Management Council, Small Conference Room, 7700 NE Ambassador Place, Suite 200, Portland, OR 97220-1384; telephone: (503) 820-2280.

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

FOR FURTHER INFORMATION CONTACT: Mr. Chuck Tracy, Salmon Management Staff Officer, Pacific Fishery Management Council: (503) 820–2280.

SUPPLEMENTARY INFORMATION: The purpose of the work session is to review information in the Council briefing book related to salmon and Pacific halibut management, Vessel Monitoring System changes, and to develop comments and recommendations for consideration at the November Council meeting.

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

Special Accommodations

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

Dated: October 3, 2004.

Emily Menashes,

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

[FR Doc. E5–5485 Filed 10–5–05; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 100305D]

Pacific Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The Pacific Fishery Management Council (Council) and its advisory entities will hold public meetings.

DATES: The Council and its advisory entities will meet October 30–November 4, 2005. The Council meeting will begin on Monday, October 31, at 10 a.m., reconvening each day through Friday. All meetings are open to the public, except a closed session will be held at 10 a.m. on Monday, October 31 to address litigation and personnel matters. The Council will meet as late as necessary each day to complete its scheduled business.

ADDRESSES: The meetings will be held at the Hyatt Regency Islandia, 1441 Quivira Road, San Diego, CA 92109; telephone 619–224–1234.

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

FOR FURTHER INFORMATION CONTACT: Dr. Donald O. McIsaac, Executive Director; telephone: 503–820–2280.

SUPPLEMENTARY INFORMATION: The following items are on the Council agenda, but not necessarily in this order:

A. Call to Order
1. Opening Remarks, Introductions
2. Roll Call
3. Executive Director's Report
4. Approve Agenda

B. Administrative Matters
1. Council Operating Procedures
2. Election of Council Chair and Vice Chair for 2006
3. Council Meeting Agenda Planning
4. Legislative Matters
5. Fiscal Matters
6. Appointments to Advisory Bodies, Standing Committees, and Other Forums
7. Council Three Meeting Outlook, Draft March 2006 Council Meeting Agenda, and Work Load Priorities

C.Coastal Pelagic Species Management
1. Pacific Sardine Stock Assessment and Harvest Guideline for 2006
2. Alternatives Analysis for Krill Management

D. Pacific Halibut Management
1. Proposed Changes to the Catch Sharing Plan and Annual Regulations

E. Enforcement Issues
1. State Enforcement Activity Report

F. Salmon Management
1. Salmon Methodology Review
2. Preseason Salmon Management Schedule for 2006
3. Klamath River Fall Chinook Conservation Objective

G. Habitat
1. Current Habitat Issues

H.Groundfish Management
1. NMFS Report
2. Stock Assessments and Rebuilding Analyses for 2007–2008 Groundfish Fisheries
3. Management Recommendations for 2007–2008 Groundfish Fisheries – Part I
4. Consideration of Inseason Adjustments in 2005 and 2006 Groundfish Fisheries
5. Off-Year Science Improvements
6. Amendment 18 (Bycatch) and Work Plan Practicability Analysis
7. Amendment 19 (Essential Fish Habitat)

8. Exempted Fish Permit (EFP) Applications for 2006
9. Management Measures for Spiny Dogfish and Pacific Cod for 2006
10. Expansion of Vessel Monitoring System
11. Update on Trawl Individual Quota Process and Community Concerns
12. Management Recommendations for 2007–2008 Groundfish Fisheries–Part II
13. Final Consideration of Inseason Adjustments, If Necessary

I. Marine Protected Areas
1. Channel Islands National Marine Sanctuary

J. Highly Migratory Species Management
1. NMFS Report
2. Proposed Protocol for Reviewing EFPs for Highly Migratory Species
3. Drift Gillnet Management
4. Albacore Management Planning
5. Bigeye Tuna Overfishing Response

Schedule of Ancillary Meetings

Sunday, October 30, 2005

Groundfish Advisory Subpanel–1 p.m.
Groundfish Management Team–1 p.m.
Budget Committee–3:30 p.m.
Trawl Individual Quota Committee–3:30 p.m.

Monday, October 31, 2005

Council Secretariat–8 a.m.
Groundfish Advisory Subpanel–8 a.m.
Groundfish Management Team–8 a.m.
Scientific and Statistical Committee–8 a.m.
Enforcement Consultants–5:30 p.m.

Tuesday, November 1, 2005

Council Secretariat–7 a.m.
California State Delegation–7 a.m.
Oregon State Delegation–7 a.m.
Washington State Delegation–7 a.m.
Groundfish Advisory Subpanel–8 a.m.
Groundfish Management Team–8 a.m.
Scientific and Statistical Committee–8 a.m.
Enforcement Consultants–As necessary

Wednesday, November 2, 2005

Council Secretariat–7 a.m.
California State Delegation–7 a.m.
Oregon State Delegation–7 a.m.
Washington State Delegation–7 a.m.
Groundfish Advisory Subpanel–8 a.m.
Groundfish Management Team–8 a.m.
Highly Migratory Species Advisory Subpanel–8 a.m.
Enforcement Consultants – As necessary

Thursday, November 3, 2005

Council Secretariat–7 a.m.
California State Delegation–7 a.m.
Oregon State Delegation–7 a.m.
Washington State Delegation–7 a.m.
Groundfish Advisory Subpanel–8 a.m.
Groundfish Management Team–8 a.m.
Highly Migratory Species Advisory Subpanel–8 a.m.
Enforcement Consultants–As necessary

Friday, November 4, 2005

Council Secretariat–7 a.m.
California State Delegation–7 a.m.
Oregon State Delegation–7 a.m.
Washington State Delegation–7 a.m.
Enforcement Consultants–As necessary

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

Special Accommodations

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

Dated: October 3, 2005.

Emily Menashes,

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

[FR Doc. E5–5487 Filed 10–5–05; 8:45 am]

BILLING CODE 3510–22–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Extension of Period of Determination on Request for Textile and Apparel Safeguard Action on Imports from China

October 3, 2005.

AGENCY: The Committee for the Implementation of Textile Agreements (the Committee).

ACTION: Notice.

SUMMARY: The Committee is extending through November 30, 2005, the period for making a determination on whether to request consultations with China regarding imports of knit fabric (Category 222).

FOR FURTHER INFORMATION CONTACT: Jay Dowling, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4058.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agriculture Act of 1956, as amended; Executive Order 11651, as amended.

BACKGROUND:

On November 19, 2004, the Committee received a request from the American Manufacturing Trade Action Coalition, the National Council of Textile Organizations, the National Textile Association, and UNITE HERE requesting that the Committee limit imports from China of knit fabric (Category 222) due to the threat of market disruption.

The Committee determined that this request provided the information necessary for the Committee to consider the request and solicited public comments for a period of 30 days. See **Solicitation of Public Comments on Request for Textile and Apparel Safeguard Action on Imports from China**, 69 FR 75516 (Dec. 17, 2004).

On December 30, 2004, the Court of International Trade preliminarily enjoined the Committee from considering or taking any further action on this request and any other requests ''that are based on the threat of market disruption''. **U.S. Association of Importers of Textiles and Apparel v. United States**, 350 F. Supp. 2d 1342 (CIT 2004). On April 27, 2005 the U.S. Court of Appeals for the Federal Circuit granted the U.S. government's motion for a stay and reversed the lower Court on June 28, 2005. **U.S. Association of Importers of Textiles and Apparel v. United States**, 413 F. 3d 1344 (Fed. Cir. 2005). Thus, CITA resumed consideration of this case.

The public comment period for this request had not yet closed when the injunction took effect on December 30, 2004. The number of calendar days remaining in the public comment period beginning with and including December 30, 2004 was 20 days. On May 9, 2005, therefore, the Committee published a notice in the **Federal Register** re-opening the comment period and inviting public comments to be received not later than May 31, 2005. See **Rescheduling of Consideration of Request for Textile and Apparel Safeguard Action on Imports from China and Solicitations of Public Comments**, 70 FR 24397 (May 9, 2005).

The Committee's Procedures, 68 FR 27787 (May 21, 2003) state that the Committee will make a determination within 60 calendar days of the close of

the public comment period as to whether the United States will request consultations with China. If the Committee is unable to make a determination within 60 calendar days, it will cause to be published a notice in the **Federal Register**, including the date by which it will make a determination.

The 60 day determination period for this case expired on August 12, 2005. However, the Committee decided to extend until August 31, 2005, the period for making a determination on this case in order to consult with the domestic textile and apparel industry and members of Congress about whether to pursue a broader agreement with China on imports of Chinese textile and apparel products to the United States. Because of these consultations, the Committee was unable to make a determination within 60 days of the close of the public comment period. See **Extension of Period of Determination on Request for Textile and Apparel Safeguard Action on Imports from China**, 70 FR 45705 (August 8, 2005). The Committee was unable to make a determination within the extended period because it was continuing to evaluate conditions in the market for knit fabric. Therefore, the Committee further extended the determination period to October 1, 2005. See **Extension of Period of Determination on Request for Textile and Apparel Safeguard Action on Imports from China**, 70 FR 53638 (September 9, 2005). The United States and China have held three rounds of consultations on a broader agreement on textiles, and further consultations will be scheduled. Because of these consultations, the Committee is further extending the determination period to November 30, 2005.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. E5–5519 Filed 10–5–05; 8:45 am]

BILLING CODE 3510–DS–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Extension of Period of Determination on Request for Textile and Apparel Safeguard Action on Imports from China

October 3, 2005.

AGENCY: The Committee for the Implementation of Textile Agreements (the Committee).

ACTION: Notice.

SUMMARY: The Committee is extending through November 30, 2005, the period for making a determination on whether to request consultations with China regarding imports of cotton and man-made fiber sweaters (Category 345/645/646).

FOR FURTHER INFORMATION CONTACT: Jay Dowling, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4058.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agriculture Act of 1956, as amended; Executive Order 11651, as amended.

BACKGROUND:

On April 6, 2005, the Committee received a request from the American Manufacturing Trade Action Coalition, the National Council of Textile Organizations, the National Textile Association, and UNITE HERE requesting that the Committee limit imports from China of cotton and man-made fiber sweaters (Category 345/645/646) due to market disruption. The Committee determined that this request provided the information necessary for the Committee to consider the request and solicited public comments for a period of 30 days. See **Solicitation of Public Comment on Request for Textile and Apparel Safeguard Action on Imports from China**, 70 FR 23107 (May 4, 2005).

The Committee's Procedures, 68 FR 27787 (May 21, 2003) state that the Committee will make a determination within 60 calendar days of the close of the public comment period as to whether the United States will request consultations with China. If the Committee is unable to make a determination within 60 calendar days, it will cause to be published a notice in the **Federal Register**, including the date by which it will make a determination.

The 60 day determination period for this case expired on August 2, 2005. However, the Committee decided to extend until August 31, 2005, the period for making determinations on these cases in order to consult with the domestic textile and apparel industry and members of Congress about whether to pursue a broader agreement with China on imports of Chinese textile and apparel products to the United States. Because of these consultations, the Committee was unable to make a determination within 60 days of the close of the public comment period. See **Extension of Period of Determination on Request for Textile and Apparel Safeguard Action on Imports from China**, 70 FR 45704 (August 8, 2005). The Committee was unable to make a determination within the extended period because it was continuing to evaluate conditions in the market for cotton and man-made fiber knit sweaters. Therefore, the Committee further extended the determination period to October 1, 2005. See **Extension of Period of Determination on Request for Textile and Apparel Safeguard Action on Imports from China**, 70 FR 53639 (September 9, 2005). The United States and China have held three rounds of consultations on a broader agreement on textiles, and further consultations will be scheduled. Because of these consultations, the Committee is further extending the determination period to November 30, 2005.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. E5–5520 Filed 10–5–05; 8:45 am]

BILLING CODE 3510–DS–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Extension of Period of Determination on Request for Textile and Apparel Safeguard Action on Imports from China

October 3, 2005.

AGENCY: The Committee for the Implementation of Textile Agreements (the Committee).

ACTION: Notice.

SUMMARY: The Committee is extending through November 30, 2005, the period for making a determination on whether to request consultations with China regarding imports of cotton and man-made fiber dressing gowns and robes (Category 350/650).

FOR FURTHER INFORMATION CONTACT: Jay Dowling, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4058.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agriculture Act of 1956, as amended; Executive Order 11651, as amended.

BACKGROUND:

On November 24, 2004, the Committee received a request from the American Manufacturing Trade Action Coalition, the National Council of Textile Organizations, the National Textile Association, and UNITE HERE requesting that the Committee limit imports from China of cotton and man-made fiber dressing gowns and robes (Category 350/650) due to the threat of market disruption (''threat case'').

The Committee determined that this request provided the information

necessary for the Committee to consider the request and solicited public comments for a period of 30 days. See **Solicitation of Public Comments on Request for Textile and Apparel Safeguard Action on Imports from China**, 69 FR 77232 (Dec. 27, 2004).

On December 30, 2004, the Court of International Trade preliminarily enjoined the Committee from considering or taking any further action on this request and any other requests ''that are based on the threat of market disruption''. **U.S. Association of Importers of Textiles and Apparel v. United States**, 350 F. Supp. 2d 1342 (CIT 2004). On April 27, 2005 the U.S. Court of Appeals for the Federal Circuit granted the U.S. government's motion for a stay and reversed the lower Court on June 28, 2005. **U.S. Association of Importers of Textiles and Apparel v. United States**, 413 F. 3d 1344 (Fed. Cir. 2005). Thus, CITA resumed consideration of this case.

The public comment period for this request had not yet closed when the injunction took effect on December 30, 2004. The number of calendar days remaining in the public comment period beginning with and including December 30, 2004 was 28 days. On May 9, 2005, therefore, the Committee published a notice in the **Federal Register** re-opening the comment period and inviting public comments to be received not later than June 6, 2005. See **Rescheduling of Consideration of Request for Textile and Apparel Safeguard Action on Imports from China and Solicitations of Public Comments**, 70 FR 24397 (May 9, 2005).

On April 6, 2005, the Committee received a request from the American Manufacturing Trade Action Coalition, the National Council of Textile Organizations, the National Textile Association, and UNITE HERE requesting that the Committee limit imports from China of cotton and man-made fiber dressing gowns and robes (Category 350/650) due to market disruption (''market disruption case''). The Committee determined that this request provided the information necessary for the Committee to consider the request and solicited public comments for a period of 30 days. See **Solicitation of Public Comment on Request for Textile and Apparel Safeguard Action on Imports from China**, 70 FR 23117 (May 4, 2005).

The Committee's Procedures, 68 FR 27787 (May 21, 2003) state that the Committee will make a determination within 60 calendar days of the close of the public comment period as to whether the United States will request consultations with China. If the Committee is unable to make a determination within 60 calendar days, it will cause to be published a notice in the **Federal Register**, including the date by which it will make a determination.

The 60 day determination period for the market disruption case expired on August 2, 2005 and the determination period for the threat case expired on August 5, 2005. However, the Committee decided to extend until August 31, 2005, the period for making determinations on these cases in order to consult with the domestic textile and apparel industry and members of Congress about whether to pursue a broader agreement with China on imports of Chinese textile and apparel products to the United States. Because of these consultations, the Committee was unable to make a determination within 60 days of the close of the public comment period. See **Extension of Period of Determination on Request for Textile and Apparel Safeguard Action on Imports from China**, 70 FR 45702 (August 8, 2005). The Committee was unable to make a determination within the extended period because it was continuing to evaluate conditions in the market for cotton and man-made fiber dressing gowns and robes. Therefore, the Committee further extended the determination period to October 1, 2005. See **Extension of Period of Determination on Request for Textile and Apparel Safeguard Action on Imports from China**, 70 FR 53639 (September 9, 2005). The United States and China have held three rounds of consultations on a broader agreement on textiles, and further consultations will be scheduled. Because of these consultations, the Committee is further extending the determination period to November 30, 2005.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. E5–5521 Filed 10–5–05; 8:45 am]

BILLING CODE 3510–DS–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Extension of Period of Determination on Request for Textile and Apparel Safeguard Action on Imports from China

October 3, 2005.

AGENCY: The Committee for the Implementation of Textile Agreements (the Committee).

ACTION: Notice.

SUMMARY: The Committee is extending through November 30, 2005, the period for making a determination on whether to request consultations with China regarding imports of men's and boys' wool trousers (Category 447).

FOR FURTHER INFORMATION CONTACT: Jay Dowling, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4058.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agriculture Act of 1956, as amended; Executive Order 11651, as amended.

BACKGROUND:

On November 12, 2004, the Committee received a request from the American Manufacturing Trade Action Coalition, the National Council of Textile Organizations, the National Textile Association, SEAMS, and UNITE HERE requesting that the Committee limit imports from China of men's and boys' wool trousers (Category 447) due to the threat of market disruption. The Committee determined that this request provided the information necessary for the Committee to consider the request and solicited public comments for a period of 30 days. See **Solicitation of Public Comments on Request for Textile and Apparel Safeguard Action on Imports from China**, 69 FR 71781 (Dec. 10, 2004).

On December 30, 2004, the Court of International Trade preliminarily enjoined the Committee from considering or taking any further action on this request and any other requests ''that are based on the threat of market disruption''. **U.S. Association of Importers of Textiles and Apparel v. United States**, 350 F. Supp. 2d 1342 (CIT 2004). On April 27, 2005 the Court of Appeals for the Federal Circuit granted the U.S. government's motion for a stay and reversed the lower court on June 28, 2005. **U.S. Association of Importers of Textiles and Apparel v. United States**, 413 F. 3d 1344 (Fed. Cir. 2005). Thus, CITA resumed consideration of this case.

The public comment period for this request had not yet closed when the injunction took effect on December 30, 2004. The number of calendar days remaining in the public comment period beginning with and including December 30, 2004 was 12 days. On May 9, 2005, therefore, the Committee published a notice in the **Federal Register** re-opening the comment period and inviting public comments to be received not later than May 23, 2005. See **Rescheduling of Consideration of Request for Textile and Apparel**

Safeguard Action on Imports from China and Solicitations of Public Comments, 70 FR 24397 (May 9, 2005).

The Committee's Procedures, 68 FR 27787 (May 21, 2003) state that the Committee will make a determination within 60 calendar days of the close of the public comment period as to whether the United States will request consultations with China. If the Committee is unable to make a determination within 60 calendar days, it will cause to be published a notice in the **Federal Register**, including the date by which it will make a determination.

The 60 day determination period for this case expired on July 22, 2005. However, the Committee was unable to make a determination at that time and extended the determination period to July 31, 2005. See **Extension of Period of Determination on Request for Textile and Apparel Safeguard Action on Imports from China**, 70 FR 43397 (July 27, 2005). The Committee decided to further extend until August 31, 2005, the period for making a determination on this case in order to consult with the domestic textile and apparel industry and members of Congress about whether to pursue a broader agreement with China on imports of Chinese textile and apparel products to the United States. Because of these consultations, the Committee was unable to make a determination within 60 days of the close of the public comment period. See **Extension of Period of Determination on Request for Textile and Apparel Safeguard Action on Imports from China**, 70 FR 45703 (August 8, 2005). The Committee was unable to make a determination within the extended period because it was continuing to evaluate conditions in the market for men's and boys' wool trousers. Therefore, the Committee further extended the determination period to October 1, 2005. See **Extension of Period of Determination on Request for Textile and Apparel Safeguard Action on Imports from China**, 70 FR 53640 (September 9, 2005). The United States and China have held three rounds of consultations on a broader agreement on textiles, and further consultations will be scheduled. Because of these consultations, the Committee is further extending the determination period to November 30, 2005.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. E5–5522 Filed 10–5–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by November 7, 2005.

Title, Form, and OMB Number: Child Annuitant's School Certification; DD Form 2788; OMB Control Number 0730–0001.

Type of Request: Extension.

Number of Respondents: 3,600.

Responses per Respondent: 1.

Annual Responses: 3,600.

Average Burden per Response: 12 minutes.

Annual Burden Hours: 720.

Needs and Uses: In accordance with 10 U.S.C. 1447 and DoD Financial Management Regulation, 7000.14–R, Volume 7B, a child annuitant between the age of 18 and 22 years of age must provide evidence of intent to continue study or training at a recognized educational institution. The certificate is required for the school semester or other period in which the school year is divided.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligations: Required to obtain or retain benefits.

OMB Desk Officer: Mr. Lewis Oleinick.

Written comments and recommendations on the proposed information collection should be sent to Mr. Oleinick at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Ms. Patricia Toppings.

Written requests for copies of the information collection proposal should be sent to Ms. Toppings, WHS/ESD/Information Management Division, 1777 North Kent Street, RPN, Suite 11000, Arlington, VA 22209.

Dated: September 27, 2005.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 05–20023 Filed 10–5–05; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by November 7, 2009.

Title, Form, and OMB Number: Waiver/Remission of Indebtedness Application; DD Form 2789; OMB Control Number 0730—0009.

Type of Request: Extension.

Number of Respondents: 8,400.

Responses per Respondent: 1.

Annual Responses: 8,400.

Average Burden per Response: 1.25 hours.

Annual Burden Hours: 10,500.

Needs and Uses: Used by current or former DoD civilian employees or military members to request waiver or remission of an indebtedness owed to the Department of Defense. Under 5 U.S.C. 5584, 10 U.S.C. 2774, and 32 U.S.C. 716, certain debts arising out of erroneous payments may be waived. Under 10 U.S.C. 4837, 10 U.S.C. 6161, and 10 U.S.C. 9837, certain debts may be remitted. Information obtained through the DD Form 1789 is used in adjudicating the request for waiver or remission. Remissions apply only to active duty military members, and thus are not covered under the Paperwork Reduction Act of 1995.

Affected Public: Individuals or households.

Frequency: Quarterly.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Mr. Lewis Oleinick.

Written comments and recommendations on the proposed information collection should be sent to Mr. Oleinick at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Ms. Patricia Toppings.

Written requests for copies of the information collection proposal should be sent to Ms. Toppings, WHS/ESD/Information Management Division, 1777 North Kent Street, RPN, Suite 11000, Arlington, VA 22209.

Dated: September 27, 2005.

Patricia L. Toppings

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 05–20024 Filed 10–5–05; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by November 7, 2005.

Title, Form, and OMB Number: Custodianship Certificate to Support Claim on Behalf of Minor Children of Deceased Members of the Armed Forces; DD Form 2790; OMB Control Number 0730–0010.

Type of Request: Extension.

Number of Respondents: 300.

Responses per Respondent: 1.

Annual Responses: 300.

Average Burden per Response: 24 minutes.

Annual Burden Hours: 120.

Needs and Uses: Per DoD Financial Management Regulation, 7000.14–R, Volume 7B, Chapter 46, paragraph 460103A(1), an annuity for a minor child is paid to the legal guardian, or, if there is no legal guardian, to the natural parent who has care, custody, and control of the child as custodian, or to a representative payee of the child. An annuity may be paid directly to the child when the child is considered to be of majority age under the law in the state of residence. The child then is considered an adult for annuity purposes and a custodian or legal fiduciary is not required.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Mr. Lewis Oleinick.

Written comments and recommendations on the proposed information collection should be sent to Mr. Oleinick at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DoD Clearance Officer: Ms. Patricia Toppings.

Written requests for copies of the information collection proposal should be sent to Ms. Toppings, WHS/ESD/ Information Management Division, 1777 North Kent Street, RPN, Suite 11000, Arlington, VA 22209.

Dated: September 27, 2005.

Patricia L. Toppings,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 05–20025 Filed 10–5–05; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by November 7, 2005.

Title, Form, and OMB Number: Enlistee Financial Statement; NAVCRUIT Form 1130/13; OMB Control Number 0703–0020.

Type of Request: Extension.

Number of Respondents: 2,700.

Responses per Respondent: 1.

Annual Responses: 2,700.

Average Burden per Response: 45 minutes.

Annual Burden Hours: 2,025.

Needs and Uses: All persons interested in entering the U.S. Navy or U.S. Navy Reserve, who have someone either fully or partially dependent on them for financial support, must provide information on their current financial situation which will determine if the individual will be able to meet their financial obligations on Navy pay. The information is provided on NAVCRUIT Form 1130/13 by the prospective enlistee during an interview with a Navy recruiter.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Mr. Lewis Oleinick.

Written comments and recommendations on the proposed information collection should be sent to Mr. Oleinick at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Ms. Patricia Toppings.

Written requests for copies of the information collection proposal should be sent to Ms. Toppings, WHS/ESD/ Information management Division, 1777 North Kent Street, RPN, Suite 11000, Arlington, VA 22209.

Dated: September 27, 2005.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 05–20026 Filed 10–5–05; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by November 7, 2005.

Title and OMB Number: Defense Federal Acquisition Regulation Supplement (DFARS), part 217, Special Contracting Methods, and related clauses in part 252.217; OMB Control Number 0704–0214.

Type of Request: Extension.

Number of Respondents: 49,944.

Responses per Respondent: Approximately 1.5.

Annual Responses: 75,944.

Average Burden per Response: Approximately 10.3 hours.

Annual Burden Hours: 785,244.

Needs and Uses: Contracting officers use the information required by the provisions and clauses prescribed in DFARS part 217 as follows:

The clause at DFARS 252.217–7012 is used in master agreements for repair and alteration of vessels. Contracting officers use the information required by paragraph (d) of the clause to determine if the contractor is adequately insured. Contracting officers use the information required by paragraphs (f) and (g) of the clause to keep informed of lost or damaged property for which the Government is liable, and to determine the appropriate course of action for replacement or repair of the property.

Contracting officers use the information required by the clause at DFARS 252.217–7018 to determine the place of performance under contracts for

bakery and dairy products. This information helps to ensure that food products are manufactured and processed in sanitary facilities.

Contracting officers use the information required by the provision at DFARS 252.217–7026 to identify the apparently successful offeror's sources of supply so that competition can be enhanced in future acquisitions. This collection complies with 10 U.S.C. 2384, Supplies: Identification of Supplier and Sources, which requires the contractor to identify the actual manufacturer or all sources of supply for supplies furnished under contract to DoD.

Contracting officers use the information required by the clause at 252.217–7028 to determine the extent of ''over and above'' work before the work commences. This requirement allows the Government to review the need for pending work before the contractor begins performance.

Affected Public: Business or other for-profit.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Mr. Lewis Oleinick.

Written comments and recommendations on the proposed information collection should be sent to Mr. Oleinick at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Ms. Patricia Toppings.

Written requests for copies of the information collection proposal should be sent to Ms. Toppings, WHS/ESD/Information Management Division, 1777 North Kent Street, RPN, Suite 11000, Arlington, VA 22209.

Dated: September 27, 2005.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 05–20027 Filed 10–5–05; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by November 7, 2005.

Title, Form, and OMB Number: Continued Health Care Benefit Program (CHCBP) Application; DD Form 2837; OMB Control Number 0704–0364.

Type of Request: Extension.

Number of Respondents: 808.

Responses per Respondent: 1.

Annual Responses: 808.

Average Burden per Response: 15 minutes.

Annual Burden Hours: 202.

Needs and Uses: The continuing information collection requirement is necessary for individuals to apply for enrollment in the Continued Health Care Benefit Program (CHCBP).

The CHCBP is a program of temporary health care benefit coverage that is made available to eligible individuals who lose health care under the Military Health System.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Mr. John Kraemer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Kraemer at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Ms. Patricia Toppings.

Written requests for copies of the information collection proposal should be sent to Ms. Toppings, WHS/ESD/Information Management Division, 1777 North Kent Street, RPN, Suite 11000, Arlington, VA 22209.

Dated: September 27, 2005.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 05–20028 Filed 10–5–05; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Proposed Collection; Comment Request

AGENCY: Office of the Under Secretary of Defense (Personnel and Readiness), DoD.

ACTION: Notice.

In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Under Secretary of Defense (Personnel and Readiness) announces the following purposed reinstatement of a public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by December 5, 2005.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to the Office of the Under Secretary of Defense (Personnel and Readiness) (Military Personnel Policy/Armed Forces Chaplains Board), Attn: Ch, Col. Richard K. Hum, 4000 Defense Pentagon, Washington, DC 20301–4000.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address or call at (703) 697–9015.

Title and OMB Control Number: Appointment of Chaplains for the Military Services; DD Form 2088; OMB Number 0704–0190.

Needs and Uses: This information collection requirement is necessary to determine proper qualification and endorsement of Religious Organizations' candidates as chaplains in respective Military Departments.

Affected Public: Not-for-profit institutions.

Annual Burden Hours: 692 hours.

Number of Respondents: 200.

Responses per Respondent: 4.6.

Average Burden per Response: 45 minutes.

Frequency: On occasion/annually.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

The DD Form 2088, ''Statement of Ecclesiastical Endorsement,'' is used whenever an ecclesiastical endorsing agency submits a Religious Ministry Professional as a candidate to become a chaplain. The ecclesiastical endorsing agency sends it to the Military Service which the Religious Ministry Professional wishes to join.

The three Military Services are required by DoD Directive 1304.19, ''Appointment of Chaplains for the Military Departments,'' and DoD Instruction 1304.28, ''Guidance for the Appointment of Chaplains for the Military Departments,'' to obtain a certification of the professional qualifications of clergy applying for the chaplaincy. DD Form 2088, ''Statement of Ecclesiastical Endorsement,'' also requests the name, address, number of years of professional experience accrued by the Religious Ministry Professional, and number of years of previous military experience. This information is used in computing constructive credit for determining grade, date of rank, and eligibility of promotion of appointees in the chaplaincies.

Dated: September 8, 2005.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 05–20029 Filed 10–5–05; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Proposed Collection; Comment Request

AGENCY: National Geospatial Intelligence Agency, DoD.

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the National Geospatial Intelligence Agency (NGA), Directorate of Human Development, announces the proposed extension of a public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by December 5, 2005.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to: Directorate of Human Development, Policy and Program Division, HDSD, Mail Stop L–028, ATTN: Sheree Cannady, Arnold, MO 63010–6238.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address, or call Sheree Cannady, (314) 263–4976.

Title; Associated Form; and OMB Number: Applicant Background Survey; NGA Form xxxx, OMB Number 0704–TBD.

Needs and Uses: This form is used to obtain the source of recruitment, ethnicity, race, and disability data on job applicants to determine if the recruitment is effectively reaching all aspects of the relevant labor pool and to determine if there are proportionate acceptance rates at various states of the recruitment process. Response is optional. The information is used for evaluating recruitment only and plays no part in the selection process.

Affected Public: Individuals or households.

Annual Burden Hours: 900.

Number of Respondents: 8,000.

Responses per Respondent: 1.

Average Burden per Response: 5 minutes.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

National Geospatial Intelligence Agency (NGA) is below parity with the Relevant Civilian Labor Force representation for many mission critical occupations. The Agency's Directorate of Human Development identifies the job skills that will be needed in our current and future workforce. NGA has a broad mission and has employees located throughout the country and world. As a result, it requires a multitude of job skills and employee backgrounds. The customers who transact business with the Agency bring with them a wide variety of backgrounds, cultures, and experiences. A diverse workforce enables the Agency to provide a measure of understanding to its customers by relating to the diverse background of those customers. By including employees of all backgrounds, all NGA employees gain a measure of knowledge, background, and experience that are beneficial in serving the agency's customers.

In order to determine if there are barriers in our recruitment and selection processes, we must rank the demographic groups that apply for our jobs. There is no other statistically valid method to make these determinations, and no source of this information other than directly from applicants. The data collected is not provided to selecting officials and plays no part in the merit staffing or the selection processes. The data collected will be used in summary form to determine trends covering the demographic make-up of applicant pools and job selections within a given occupation or organizational group. The records of those applicants not selected are destroyed in accordance with the agency's records management process.

Dated: September 8, 2005.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 05–20030 Filed 10–5–05; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Strategic Environmental Research and Development Program, Scientific Advisory Board

AGENCY: Department of Defense.

ACTION: Notice.

SUMMARY: This Notice is published in accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463). The topic of the meeting on October 18–20, 2005 is to review new start research and development projects requesting Strategic Environmental Research and Development Program funds in excess of $1 million. This meeting is open to the public. Any interested person may attend, appear before, or file statements with the Scientific Advisory Board at the time and in the manner permitted by the Board.

DATES: October 18, 2005 from 8 a.m. to 5:05 p.m., October 19, 2005 from 8:30 a.m. to 5:20 p.m. and October 20, 2005 from 8:30 a.m. to 3:30 p.m.

ADDRESSES: SERDP Program Office, 901 North Stuart Street, Suite 804, Arlington, VA 22203.

FOR FURTHER INFORMATION CONTACT: Ms. Misa Jensen, SERDP Program Office, 901 North Stuart Street, Suite 303, Arlington, VA or by telephone at (703) 696–2126.

Dated: September 30, 2005.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 05–20033 Filed 10–5–05; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary, DoD.

ACTION: Notice to add a system of records.

SUMMARY: The Office of the Secretary of Defense proposes to add a system of records to its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The changes will be effective on November 7, 2005 unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to OSD Privacy Act Coordinator, Records Management Section, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301–1155.

FOR FURTHER INFORMATION CONTACT: Ms. Juanita Irvin at (703) 696–4940.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed systems reports, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, were submitted on September 29, 2005, to the House Committee on Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: September 30, 2005.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DPR 32

SYSTEM NAME:

Employer Support of the Guard and Reserve Ombudsman and Outreach Programs.

SYSTEM LOCATION:

Oracle On-Demand Advanced Data Center, Austin, TX 78753–2663.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Members of the Armed Forces, to include Reserve and National Guard personnel, and members of the National Disaster Medical System (NDMS).

CATEGORIES OF RECORDS IN THE SYSTEM:

Information includes, but is not limited to, name, home address, phone number, branch of service, and assigned military unit of Armed Forces personnel; name, home address, and phone number of NDMS members; name of employer, as well as, phone number and, if applicable, employer point of contact, and nature of employment/reemployment conflict; any notes and documentation prepared as a consequence of assisting the servicemember, NDMS member, or the employer.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

38 U.S.C. Chapter 43, Employment and Reemployment Rights of Members of the Uniformed Services; 42 U.S.C. 300hh–11(e)(3)(A), Employment and Reemployment Rights; DoD Instruction 1205.22, Employer Support of the Guard and Reserve; DoD Instruction 1205.12, Civilian Employment and Reemployment Rights of Applicants for, and Service Members and Former Service Members of the Uniformed Services; and DoD Directive 1250.1, National Committee for Employer Support of the Guard and Reserve.

PURPOSE(S):

The purpose of the system is to support the Employer Support of the Guard and Reserve (ESGR) Ombudsman and Outreach Program in providing assistance to servicemembers and members of the National Disaster Medical System in resolving employment-reemployment conflicts and in providing information to employers regarding the requirements of the Uniform Services Employment and Reemployment Act.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To Federal, State, and local governmental agencies, as well as to private employers, in furtherance of informal mediation efforts to resolve employment-reemployment conflicts.

To the Department of Labor and the Department of Justice for investigation of, and possible litigation involving, potential violations of the Uniformed Services Employment and Reemployment Rights Act.

The DoD ''Blanket Routine Uses'' set forth at the beginning of OSD's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are automated and are maintained in computers and computer output media.

RETRIEVABILITY:

Records may be retrieved by name, Company, zip codes, case numbers, problems/resolution codes, and/or e-mail address.

SAFEGUARDS:

Access to personal information will be maintained in a secure, password protected electronic system that will utilize security hardware and software to include: multiple firewalls, active intruder detection, and role-based access controls. Paper records will be maintained in a controlled facility where physical entry is restricted by the use of locks, guards, or administrative procedures. Access to records is limited to those officials who require the records to perform their official duties consistent with the purpose for which the information was collected. All personnel whose official duties require access to the information are trained in the proper safeguarding and use of the information.

RETENTION AND DISPOSAL:

Records are treated as permanent pending a determination by the National Archives and Records Agency of authority for disposition of the records.

SYSTEM MANAGERS AND ADDRESS:

National Committee, Employer Support of the Guard and Reserve, ATTN: Information Technology, Executive Office, 1555 Wilson Boulevard, Suite 319, Arlington, VA 22209–2405.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the National Committee, Employer Support of the Guard and Reserve, ATTN: Case Manager, 1555 Wilson Boulevard, Suite 319, Arlington, VA 22209–2405.

Requests should include the name, address, telephone number, military unit and branch of service of the servicemember or the name, address, and telephone number of the NDMS member; the request also should include the name, address, and telephone

number of the employer and a brief description of the problem and date of occurrence.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system of records should address written inquiries to National Committee, Employer Support of the Guard and Reserve, ATTN: Case Manager, 1555 Wilson Boulevard, Suite 319, Arlington, VA 22209–2405.

Requests should include the name, address, telephone number, military unit and branch of service of the servicemember or the name, address, and telephone number of the NDMS member; the request also should include the name, address, and telephone number of the employer and a brief description of the problem and date of occurrence.

CONTESTING RECORD PROCEDURES:

The OSD rules for accessing records, for contesting contents and appealing initial agency determinations are contained in OSD Administrative Instruction 81; 32 CFR part 311; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information is obtained from the individual, the employer, and other DoD record systems.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 05–20032 Filed 10–5–05; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Government-Owned Invention; Available for Licensing

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The invention listed below is assigned to the United States Government, as represented by the Secretary of the Navy and is available for licensing by the Department of the Navy. U.S. Patent No. 6,839,998: Replacement Chassis Stock System for Firearms.

ADDRESSES: Requests for copies of the inventions cited should be directed to the Naval Surface Warfare Center, Crane Division, Code 054, Building 2, 300 Highway 361, Crane, IN 47522–5001, and must include the patent number.

FOR FURTHER INFORMATION CONTACT: Mr. Brian Bailey, Naval Surface Warfare Center, Crane Division, Code 054, Building 2, 300 Highway 361, Crane, IN 47522–5001, telephone (812) 854–1865. An application for license may be downloaded from *http://www.crane.navy.mil/newscommunity/techtrans_CranePatents.asp.*

(Authority: 35 U.S.C. 207, 37 CFR Part 404.)

Dated: September 27, 2005.

I.C. Le Moyne Jr.,

Lieutenant, Judge Advocate General's Corps, U.S. Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 05–20104 Filed 10–5–05; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Meeting of the Ocean Research Advisory Panel

AGENCY: Department of the Navy, DOD.

ACTION: Notice of open meetings.

SUMMARY: The Ocean Research Advisory Panel (ORAP) will meet to discuss National Oceanographic Partnership Program (NOPP) activities. All sessions of the meetings will remain open to the public.

DATES: The meetings will be held on Thursday, October 27, 2005, from 8:30 a.m. to 5 p.m. and Friday, October 28, 2005, from 8:30 a.m. to 3 p.m. In order to maintain the meetings time schedules, members of the public will be limited in their time to speak to the Panel. Members of the public should submit their comments one week in advance of the meetings to the meeting Point of Contact.

ADDRESSES: The meetings will be held at the Consortium for Oceanographic Research and Education, 1201 New York Ave., NW., Suite 420, Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Dr. Melbourne G. Briscoe, Office of Naval Research, 875 North Randolph Street Suite 1425, Arlington, VA 22203–1995, telephone 703–696–4120.

SUPPLEMENTARY INFORMATION: This notice of open meetings is provided in accordance with the Federal Advisory Committee Act (5 U.S.C. App. 2). The purpose of the meetings is to discuss NOPP activities. The meetings will include discussions on ocean observations, current and future NOPP activities, and other current issues in the ocean sciences community.

Dated: September 26, 2005.

I.C. Le Moyne Jr.,

Lieutenant, Judge Advocate General's Corps, U.S. Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 05–20103 Filed 10–5–05; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–653–000]

Dominion Transmission, Inc.; Notice of Refund Report

September 30, 2005.

Take notice that on September 1, 2005, Dominion Transmission, Inc. (DTI) tendered for filing a report of refunds that DTI flowed through to its customers.

DTI states that the purpose of the filing is to report the refunds that resulted from Columbia Gulf Transmission Company's (Columbia Gulf) settlement in Docket No. RP91–160, which required Columbia Gulf to refund environmental costs reimbursed by its insurance carriers. DTI states that the refunds were allocated based on DTI's customers' fixed cost responsibility as set out on sheet No. 38 of DTI's FERC Gas Tariff.

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 on or before the date as indicated below. 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.

Comment Date: 5 p.m. eastern time on October 7, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–5501 Filed 10–5–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–652–000]

Great Lakes Gas Transmission Limited Partnership; Notice of Proposed Changes In FERC Gas Tariff

September 30, 2005.

Take notice that on September 2, 2005, Great Lakes Gas Transmission Limited Partnership (Great Lakes) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, to become effective November 1, 2005:

Ninth Revised Sheet No. 45
Third Revised Sheet No. 45A
Fifth Revised Sheet No. 46
Fifth Revised Sheet No. 51
Second Revised Sheet No. 52
First Revised Sheet No. 57D
Ninth Revised Sheet No. 84

Great Lakes states that these proposed tariff sheets are being filed to address various matters with respect to Great Lakes' right of first refusal provisions. Great Lakes further states that none of these proposed changes will affect any of Great Lakes' currently effective rates and charges.

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. E5–5500 Filed 10–5–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER03–1223–000]

Montana Megawatts I, LLC, NorthWestern Energy Division of NorthWestern Corporation; Notice of Filing

September 30, 2005.

Take notice that on September 22, 2005, Montana Megawatts I, LLC and NorthWestern Energy Division of NorthWestern Corporation tendered for filing a withdrawal of the application filed August 18, 2003, and a request that the captioned proceeding be terminated.

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 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 October 13, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–5494 Filed 10–5–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG05–102–000]

Noble Thumb Windpark I, LLC; Notice of Application for Commission Determination of Exempt Wholesale Generator Status

September 30, 2005.

Take notice that on September 28, 2005, Noble Thumb Windpark I, LLC (Noble Thumb) filed with the Commission an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations. Noble Thumb states that it will construct, own and operate an approximately 48 MW wind-powered generating facility located in Bingham Township near the Village of Ubly, Huron County, Michigan.

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 online 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 October 19, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–5493 Filed 10–5–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER05–1021–002]

Pacific Gas and Electric Company; Notice of Filing

September 28, 2005.

Take notice that on September 15, 2005, Pacific Gas and Electric Company (PG&E) and the City and County of San Francisco (CCSF) tendered for filing a Motion to Withdraw the unexecuted Generator Interconnection Agreement without prejudice in the above-referenced 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, 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 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 October 4, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–5506 Filed 10–5–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EL03–59–003, IN03–10–000, PA02–2–000]

Reliant Energy Services, Inc. et al.; Notice of Filing

September 28, 2005.

Take notice that on September 7, 2005, Reliant Energy Services, Inc., Reliant Energy Coolwater, Inc., Reliant Energy Ellwood, Inc., Reliant Energy Etiwanda, Inc., Reliant Energy Mandalay, Inc., and Reliant Energy Ormond Beach, Inc. (collectively, Reliant) filed a motion for confirmation of waiver and modification of Article IV, section 4 of the Stipulation and Consent Agreement approved by the Commission in the above-referenced proceedings.

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 online 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 October 5, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–5505 Filed 10–5–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No.CP05–418–000]

Tennessee Gas Pipeline Company; Notice of Application

September 28, 2005.

Take notice that Tennessee Gas Pipeline Company (Tennessee), 1001

Louisiana, Houston, Texas 77002, filed in Docket No. CP05–418–000 on September 15, 2005, an application pursuant to sections 7(b) and (c) of the Natural Gas Act (NGA), 15 U.S.C. 717f(b) and section 717f(c), as amended, and the Regulations of the Federal Energy Regulatory Commission (Commission), 18 CFR 157.5 requesting that the Commission issue an Order authorizing Tennessee to: (i) Acquire by termination and assignment the South Pass 77 capacity entitlements held by Dynegy Marketing and Trade, as derived from the respective ownership interests of Tennessee and Columbia Gulf Transmission Corporation in the South Pass 77 System; and (ii) abandon an associated downstream transportation service performed under Tennessee Rate Schedule T–124. This filing may be also viewed on the Web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call (202) 502–8659 or TTY, (202) 208–3676.

Any questions regarding this application should be directed to Kevin P. Erwin, Tennessee Gas Pipeline Company, 1001 Louisiana, Houston, Texas 77002, at (713) 420–1212 or fax (713) 420–1601.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing 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.

Comment Date: 5 p.m. eastern time on October 6, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–5512 Filed 10–5–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TX05–1–005]

Tennessee Valley Authority; Notice of Filing

September 30, 2005.

Take notice that on September 20, 2005, Tennessee Valley Authority tendered for filing a revised system impact studies report as requested by the Commission on August 3, 2005 in this 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, 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 online 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 October 11, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–5492 Filed 10–5–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

September 30, 2005.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER02–1406–010; ER99–2928–006; ER96–2677–007.

Applicants: Acadia Power Partners, LLC; Cleco Evangeline LL; Cleco Power LLC.

Description: Acadia Power Partners, LLC *et al.* notify the Commission of a change in status as a result of their affiliation with an owner of a transmission facility, pursuant to the Commission's Order 652.

Filed Date: 09/26/2005.

Accession Number: 20050928–0217.

Comment Date: 5 p.m. Eastern Time on Monday, October 17, 2005.

Docket Numbers: ER02–2400–004.

Applicants: Southern California Water Company.

Description: Southern California Water Co submits its triennial market-power analysis in compliance with Commission Order issued 9/27/02.

Filed Date: 09/26/2005.

Accession Number: 20050928–0215.

Comment Date: 5 p.m. Eastern Time on Monday, October 17, 2005.

Docket Numbers: ER05–1086–002.

Applicants: ISO New England Inc.

Description: ISO New England, Inc submits a Coordination Agreement between ISO and New Brunswick System Operator, Inc.

Filed Date: 09/26/2005.

Accession Number: 20050928–0214.

Comment Date: 5 p.m. Eastern Time on Monday, October 17, 2005.

Docket Numbers: ER05–1508–000.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator Inc.

submits a Large Generator Interconnection Agreement among Power Partners Midwest LLC, Midwest ISO, and Interstate Power and Light Co.

Filed Date: 09/26/2005.

Accession Number: 20050927–0023.

Comment Date: 5 p.m. Eastern Time on Monday, October 17, 2005.

Docket Numbers: ER05–1509–000.

Applicants: Arizona Public Service Company.

Description: Arizona Public Service Co. submits a compliance filing to its Open Access Transmission Tariff in response to FERC Order 2006.

Filed Date: 09/26/2005.

Accession Number: 20050928–0211.

Comment Date: 5 p.m. Eastern Time on Monday, October 17, 2005.

Docket Numbers: ER05–926–001

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator, Inc. submits the Large Generator Interconnection Agreement among Okoboji Wind Farm, LLC, Midwest ISO, and Interstate Power & Light Co.

Filed Date: 08/30/2005.

Accession Number: 20050831–0052.

Comment Date: 5 p.m. Eastern Time on Tuesday, October 11, 2005.

Docket Numbers: ER05–949–001.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator, Inc submits its Large Generator Interconnection Agreement with Power Partners Midwest, LLC, Midwest ISO, and Northern Indiana Public Service Co.

Filed Date: 08/30/2005.

Accession Number: 20050831–0051.

Comment Date: 5 p.m. Eastern Time on Tuesday, October 11, 2005.

Any person desiring to intervene or to protest in any of the above proceedings 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) on or before 5 p.m. Eastern Time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. 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. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other and the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also 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 dockets(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. E5–5503 Filed 10–5–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2354–087 Georgia]

Georgia Power Company; Notice of Availability of Environment Assessment

September 28, 2005.

An environmental assessment (EA) is available for public review. The EA was prepared for an application filed by Georgia Power Company on June 2, 2005, requesting the Commission's authorization to permit the Clayton-Rabun County Water and Sewer Authority (Authority) to increase its water withdrawal from Lake Rabun, a reservoir of the North Georgia Project, from 2.0 million gallons per day to 3.5 million gallons per day for municipal water supply.

The EA evaluates the environmental impacts that would result from permitting the Authority to increase its water withdrawal from Lake Rabun, as stated above. The existing 10-inch piping from the intake pumps to the distribution main would be replaced with 16-inch piping. No significant construction activity would be required within the project boundary. The EA finds that approval of the application would not constitute a major Federal action significantly affecting the quality of the human environment.

A copy of the EA is attached to a Commission order titled ''Order Approving Non-Project Use of Project Lands and Waters'', issued September 27, 2005, and is available at the Commission's Public Reference Room. A copy of the EA may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''elibrary'' link. Enter the docket number (P–2354) in the docket number field to access the document. For assistance, call (202) 502–8222 or (202) 502–8659 (for TTY).

Magalie R. Salas,

Secretary.

[FR Doc. E5–5511 Filed 10–5–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12514–000]

Northern Indiana Public Service Company; Notice of Application READY For Environmental Analysis and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions

September 30, 2005.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Original Major License.

b. *Project No.:* 12514–000.

c. *Date Filed:* June 28, 2004.

d. *Applicant:* Northern Indiana Public Service Company.

e. *Name of Project:* Norway and Oakdale Hydroelectric Project.

f. *Location:* On the Tippecanoe River in Carroll and White Counties, Indiana. The project does not affect federal lands.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Jerome B. Weeden, Vice President Generation; Northern Indiana Public Service Company; 801 East 86th Avenue; Merrillville, IN 46410; (219) 647–5730.

i. *FERC Contact:* Sergiu Serban at (202) 502–6211, or *sergiu.serban@ferc.gov*.

j. Deadline for filing comments, recommendations, terms and conditions, and prescriptions is 60 days from the issuance date of this notice; reply comments are due 105 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Comments, recommendations, terms and conditions, and prescriptions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site (*http://www.ferc.gov*) under the ''e-Filing'' link. After logging into the e-Filing system, select ''Comment on Filing'' from the Filing Type Selection screen and continue with the filing process.''

k. This application has been accepted and is now ready for environmental analysis.

l. *Description of the Project:* The existing Norway Oakdale Hydroelectric Project consists of the Norway development and the Oakdale development and has a combined installed capacity of 16.4 megawatts (MW). The project produces an average annual generation of 65,000 megawatt-hours (MWh). All power is dispatched directly into the local grid and is used within the East Central Area Reliability Coordination Agreement.

The Norway development includes the following constructed facilities: (1) A 915-foot-long dam consisting of a 410-foot-long, 34-foot-maximum-height earthfill embankment with a concrete corewall; a 225-foot-long, 29-foot-high concrete gravity overflow spillway with flashboards; a 120-foot-long, 30-foot-high concrete gated spillway with three 30-foot wide, 22-foot-high spillway gates; a 18-foot-wide, 30-foot-high trash sluice housing with one 8-foot-wide, 11-foot-high gate; and a 142-foot-long, 64-foot-wide powerhouse integral with the dam containing four vertical Francis turbines-generating units with a rated head of 28 feet, total hydraulic capacity of 3,675 cubic feet per second (cfc) and a total electric output of 7.2 MW; (2) a 10-mile-long, 10-foot average depth, 1,291-acre reservoir; (3) a two-mile-long 69,000 volt transmission line; and (4) appurtenant facilities.

The Oakdale development includes the following constructed facilities: (1) A 1688-foot-long dam consisting of a 126-foot-long, 58-foot-maximum-height east concrete buttress and slab dam connecting the left abutment to the powerhouse; a 114-foot-long, 70-foot-wide powerhouse integral with the dam containing three vertical Francis turbines-generating units with a rated head of 42 to 48 feet, total hydraulic capacity of 3,200 cubic feet per second (cfc) and a total electric output of 9.2 MW; an 18-foot-wide structure containing a nonfunctional fish ladder and a gated trash sluice; a 84-foot-long ogee-shaped concrete gated spillway with two 30-foot wide, 22-foot-high vertical lift gates; a 90-foot-long, six bay concrete gravity siphon-type auxiliary spillway; and a 1,260-foot-long west earth embankment with a maximum height of 58 feet and a 30-foot-wide crest; (2) a 10-mile-long, 16-foot average depth, 1,547-acre reservoir; and (3) appurtenant facilities.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field (P–12514) to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

All filings must: (1) Bear in all capital letters the title ''COMMENTS'', ''REPLY COMMENTS'', ''RECOMMENDATIONS,'' ''TERMS AND CONDITIONS,'' or ''PRESCRIPTIONS;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. Public notice of the filing of the application, which has already been given, established the due date for filing competing applications or notices of intent. Under the Commission's regulations, any competing application must be filed in response to and in compliance with public notice of the initial application. No competing applications or notices of intent may be filed in response to this notice.

Magalie R. Salas,

Secretary.

[FR Doc. E5–5495 Filed 10–5–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application and Applicant-Prepared EA Accepted for Filing, Soliciting Motions To Intervene and Protests, and Soliciting Comments, and Final Recommendations, Terms and Conditions, and Prescriptions

September 30, 2005.

Take notice that the following hydroelectric application and applicant-prepared environmental assessment has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New major license.

b. *Project No.:* 2219–020.

c. *Date Filed:* April 29, 2005.

d. *Applicant:* Garkane Energy Cooperative, Inc. (Garkane).

e. *Name of Project:* Boulder Creek Hydroelectric Project.

f. *Location:* On Boulder Creek about 6 miles north of the town of Boulder in Garfield County, Utah. About 29.6 acres are located on the Dixie National Forest.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)—825(r).

h. *Applicant Contact:* John Spendlove, P.E., Jones and DeMille Engineering, 1535 South 100 West, Richfield, UT 84710; (435) 896–8266.

i. *FERC Contact:* Dianne Rodman, (202) 502–6077, E-mail: *Dianne.rodman@ferc.gov*.

j. Deadline for filing motions to intervene and protests, comments, and final recommendations, terms and conditions, and prescriptions is 60 days

from the issuance of this notice; reply comments are due 105 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Motions to intervene and protests, comments, recommendations, terms and conditions, and prescriptions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

k. This application has been accepted for filing.

l. The existing project consists of: (1) The West Fork rock-filled 20-foot-high, 30-foot-long diversion dam with ungated spillway and gates on the West Fork of Boulder Creek; (2) a buried 17,600-foot-long, 27-inch-diameter concrete conduit running from the West Fork dam to the East Fork of Boulder Creek; (3) the East Fork earth-filled 29-foot-high, 630-foot-long forebay dam with an ogee concrete spillway on the East Fork of Boulder Creek; (4) a 22,200-foot-long, 31.5 to 34-inch-diameter steel penstock running from the East Fork dam to the Boulder Plant powerhouse; (5) the seasonally-operated Peterson Plant powerhouse located about 17,000 feet below the East Fork dam with an installed capacity of 100 kilowatts (kW); (6) the Boulder Plant powerhouse located at the downstream end of the penstock with an installed capacity of 1,400 kW; (7) an afterbay re-regulating pool formed by a 12-foot-high earth-filled dam with gates and ditches; (8) a 35,000-foot-long, 7.2-kilovolt (kV) distribution and communication line from the West Fork dam to the East Fork dam and on to the Peterson Plant powerhouse; (9) a 4,725-foot-long, 12.47/7.2-kV distribution and communication line from the Peterson Plant powerhouse to the Boulder Plant substation; (10) a 100-foot-long, 2,400-volt transmission line connecting the Boulder Plant powerhouse with the Boulder Plant substation; and (11) other appurtenant structures and equipment.

Garkane proposes to reconstruct the West Fork dam to provide storage for fishery enhancement. Garkane would increase the height of the dam by 12.5 feet to a new height of 36.5 feet, resulting in a surface area of about 4.8 acres and a storage capacity of 54.2 acre-feet. Garkane would continue to operate the project in run-of-river mode.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

n. 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.

All filings must (1) bear in all capital letters the title ''PROTEST'', ''MOTION TO INTERVENE'', ''COMMENTS,'' ''REPLY COMMENTS,'' ''RECOMMENDATIONS,'' ''TERMS AND CONDITIONS,'' or ''PRESCRIPTIONS;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Magalie R. Salas,

Secretary.

[FR Doc. E5–5496 Filed 10–5–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Non-Project Use of Project Lands and Waters and Soliciting Comments, Motions To Intervene, and Protests

September 30, 2005.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-Project Use Of Project Lands And Waters.

b. *Project No:* 2232–495.

c. *Date Filed:* September 7, 2005.

d. *Applicant:* Duke Energy Corporation.

e. *Name of Project:* The Catawba-Wateree Project, which includes the Cowans Ford development, also known as Lake Norman.

f. *Location:* The proposed action will take place at the Cowans Ford development, also known as Lake Norman, which is located in Iredell County, on the Catawba River approximately 16 miles northwest of Charlotte, North Carolina and 7 miles west-northwest of Huntersville, North Carolina.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a) 825(r) and sections 799 and 801.

h. *Applicant Contact:* Mr. Joe Hall, Lake Management Representative; Duke Energy Corporation; P.O. Box 1006; Charlotte, NC; 28201–1006; (704) 382–8576

i. *FERC Contact:* Any questions on this notice should be addressed to Lesley Kordella at (202) 502–6406, or by e-mail: *Lesley.Kordella@ferc.gov*.

j. *Deadline for filing comments and or motions:* October 31, 2005.

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–2232–495) 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 e-filings.

k. *Description of Request:* Duke Energy Corporation (Duke Power), licensee for the Catawba Wateree Hydroelectric Project, has requested Commission approval to lease to the Davidson Pointe Homeowners Association, Inc. (Davidson Pointe), 0.78 total acres of project lands on Lake Norman for a commercial/residential marina. Davidson Pointe, a commercial-residential development is located on Lake Davidson on Bridges Farm Road in Iredell County, North Carolina. The applicant proposes that 0.69 acres of the total 0.78 acres to be leased would have one pier with 16 double boat slips and 4 end ties for boats or 36 docking locations. The applicant also proposes to construct a dry hydrant on the remaining 0.9 acres as requested by the State Fire Marshall. There will be no dredging during construction and the pier will be built on site.

l. *Location of the Application:* This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (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, .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. 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 applications. A copy of the applications 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. E5–5497 Filed 10–5–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 9184–013]

Flambeau Hydro, LLC; Notice Soliciting Scoping Comments

September 30, 2005.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Subsequent License.

b. *Project No.:* P–9184–013.

c. *Date filed:* June 10, 2005.

d. *Applicant:* Flambeau Hydro, LLC.

e. *Name of Project:* Danbury Hydroelectric Project.

f. *Location:* On the Yellow River in Burnett County, Wisconsin. The project does not occupy federal lands.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Scott Klabunde, North American Hydro, Inc., PO Box 167, Neshkoro, WI 54960; 920–293–4628 ext. 14.

i. *FERC Contact:* Tim Konnert, (202) 502–6359 or *timothy.konnert@ferc.gov*.

j. *Deadline for filing scoping comments:* October 31, 2005.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Scoping comments may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''eFiling'' link.

k. This application is not ready for environmental analysis at this time.

l. *The existing Danbury Project consists of:* (1) A35-foot-high concrete dam with a 48-foot-wide spillway with three sections, each of which is equipped with 7-foot-high slide gates; (2) a 300-foot-long earthen dike connecting to the right side of the concrete dam; (3) a powerhouse (Plant 1) integral to the dam containing a 176-kW turbine generating unit and a 300-kW turbine generating unit; (4) a 255-acre reservoir with a negligible net storage capacity at a water surface elevation of 929.21 feet NGVD from April through October and 928.11 feet NGVD from November through March; (5) a 2,500-foot-long power canal that conveys water to; (6) a second powerhouse (Plant 2) containing a single 600-kW turbine generating unit; and (7) appurtenant facilities. The applicant estimates that the total average annual generation is 3,844 megawatt-hours.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

n. You may also register online at *http://www.ferc.goo.esubscribenow.htm* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

o. *Scoping Process:* The Commission staff intends to prepare a single Environmental Assessment (EA) for the Danbury Hydroelectric Project in accordance with the National Environmental Policy Act. The EA will consider both site-specific and cumulative environmental impacts and reasonable alternatives to the proposed action.

Commission staff do not propose to conduct any on-site scoping meetings at this time. Instead, we are soliciting comments, recommendations, and information, on the Scoping Document (SD).

Copies of the SD outlining the subject areas to be addressed in the EA were distributed to the parties on the Commission's mailing list. Copies of the SD may be viewed on the Web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call 1–866–208–3676 or for TTY, (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–5498 Filed 10–5–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Transfer of License, and Soliciting Comments, Motions To Intervene, and Protest

September 28, 2005.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Transfer of License.

b. *Project No.:* 4362–004.

c. *Date Filed:* August 3, 2005.

d. *Applicants:* Inman Mills (transferor) Riverdale Development Venture, LLC (transferee).

e. *Name and Location of Project:* The Riverdale Project is located on the Enoree River in Spartanburg County, South Carolina.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

g. *Applicant Contacts:* For the transferor: William Bowen, Inman Mills, P.O. Box 207, Inman, SC 29349, (864) 472–2121, Ext 215.

For the transferee: Gregory Sviensson, Riverdale Development Venture, LLC, 190 Graham Street, Enoree, SC 29335, (864) 969–4996.

h. *FERC Contact:* Robert Bell at (202) 502–6062.

i. *Deadline for filing comments, protests, and motions to intervene:* October 31, 2005.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. 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. Please include the Project Number on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all intervenors filing a document with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the documents on that resource agency.

j. Description of Application: The Applicants seek Commission approval to transfer the license for the Riverdale Project from the Inman Mills to Riverdale Development Venture, LLC.

k. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number (P–4362) 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 addresses in item g. above.

l. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

m. 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.

n. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and eight copies to: The 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 Applicants specified in the particular application.

o. 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 Applicants. 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 Applicants' representatives.

Magalie R. Salas,

Secretary.

[FR Doc. E5–5504 Filed 10–5–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, Protests, Recommendations, and Terms and Conditions

September 28, 2005.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Conduit Exemption.

b. *Project No.:* 12605–000.

c. *Date filed:* July 22, 2005, supplemented September 20, 2005.

d. *Applicant:* Rentricity Inc.

e. *Name of Project:* Stamford Energy Recovery Project.

f. *Location:* The Stamford Energy Recovery Project would be located at a pressure regulator vault in an Aquarian Water Company supply conduit in the Town of Stamford, Fairfield County, Connecticut.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Mr. Frank Zammataro, Rentricity Inc., PO Box 1021, Planetarium Station, New York, NY 10024, (732) 319–4501.

i. *FERC Contact:* James Hunter, (202) 502–6086.

j. *Status of Environmental Analysis:* This application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

k. *Deadline for filing responsive documents:* The Commission directs, pursuant to Section 4.34(b) of the Regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, motions to intervene, protests, recommendations, terms and conditions, and prescriptions concerning the application be filed with the Commission by November 28, 2005. All reply comments must be filed with the Commission by December 14, 2005.

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.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

l. *Description of Project:* The proposed small conduit hydroelectric project would consist of: (1) T-flanges that would replace sections of the supply pipeline, (2) connecting piping and electronic valves, and (3) a 40-kilowatt reverse pump generator. The average annual energy production would be 350,000 kilowatt hours.

m. This filing is available for review and reproduction at the Commission in the Public Reference Room, Room 2A, 888 First Street, NE., Washington, DC 20426. The filing may also be viewed on the Web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number, here P–12605, 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 review and reproduction at the address in item h. above.

n. Development Application—Any qualified applicant desiring to file a competing application must submit to the Commission, on or before the specified deadline date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified deadline date for the particular application. Applications for preliminary permits will not be accepted in response to this notice.

o. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit a competing development application. A notice of intent must be served on the applicant(s) named in this public notice.

p. Protests or Motions to Intervene—Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

q. All filings must (1) bear in all capital letters the title ''PROTEST'', ''MOTION TO INTERVENE'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''COMMENTS'', ''REPLY COMMENTS,'' ''RECOMMENDATIONS,'' ''TERMS AND CONDITIONS,'' or ''PRESCRIPTIONS;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and eight copies to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Office of Energy Projects, Federal Energy Regulatory Commission, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Magalie R. Salas,

Secretary.

[FR Doc. E5–5508 Filed 10–5–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

September 28, 2005.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary permit.

b. *Project No.:* 12611–000.

c. *Date Filed:* September 6, 2005.

d. *Applicant:* Verdant Power, LLC.

e. *Name of Project:* Roosevelt Island Tidal Energy Hydroelectric Project.

f. *Location:* The project would be located in the East River—East Channel off Roosevelt Island, and on Roosevelt Island lands bordering the northern Channel, in Queens County, New York. The project would not occupy Federal or Tribal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)—825(r).

h. *Applicant Contact:* Mr. William H. Taylor, Verdant Power, LLC, 4640 13th Street North, Arlington, VA 22207–2102, (703) 528–6445.

i. *FERC Contact:* Robert Bell, (202) 502–6062.

j. *Deadline for Filing Comments, Protests, and Motions to Intervene:* 60 days from the issuance date of this notice.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the

Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed tidal energy development project would consist of: (1) 494 proposed 16-foot-diameter, 21-kilowatt free-flow turbine generating units, deployed below the water surface in 30 rows with an average of 17 units per row, and (2) proposed power control and interconnection facilities located on Roosevelt Island. The rows would be separated by 200 feet of channel length and the units would be distributed across the western half of the channel. The project would have an annual generation of 32.8 gigawatt hours that would be sold to a local utility.

l. *Locations of Applications:* A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street, NE., Room 2A, Washington DC 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. 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.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Competing Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

o. Competing Development Application—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with18 CFR 4.30(b) and 4.36.

p. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

q. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

r. 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.

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 ''e-filing'' link. The Commission strongly encourages electronic filing.

s. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''COMPETING APPLICATION'', ''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. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The 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.

t. 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. E5–5509 Filed 10–5–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–422–000]

El Paso Natural Gas Company; Technical Conference Agenda

September 30, 2005.

As agreed among the parties at the September 21, 2005 technical conference in this proceeding, additional conferences will be held on October 18–20, 2005 to further discuss issues raised by El Paso's filing.

The conferences will begin at 10 a.m. (EST), Tuesday, October 18, 2005 in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, and will continue through Wednesday, October 19, 2005 and Thursday, October 20, 2005. There will be a workshop session from 10 a.m. until 2 p.m. on October 18, 2005, at which El Paso will present examples of how its proposed new services will work and how these services may be used to meet shippers' needs. Staff will not attend the October 18 session after 2 p.m. to provide the parties an opportunity to discuss settlement of some of the issues in this proceeding. The format of the conferences on October 19 and 20, 2005, will be the traditional technical conference format with questions and

answers on issues related to El Paso's filing.

As further agreed at the September 21, 2005 conference, El Paso will submit on Monday, October 3, 2005, profiles and examples of how customers can use the new services as well as proposed tariff sheet changes. Parties may submit initial briefs by October 5, 2005, addressing the issue of whether the rate cap contained in Article 11.2 of El Paso's 1996 Settlement should continue to apply to El Paso's rates and may submit reply briefs on this issue by October 14, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–5499 Filed 10–5–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD05–015–000]

Notice of Hydro Licensing Status Workshop 2005

Hydro Licensing Status Workshop 2005: Avondale Mills, Inc., Project No. 5044–008; Central Maine Power Company, Project No. 2283–005; Central Vermont Public Service Corporation, Project Nos. 11475–000 and 11478–000; City of Escondido, California, Project No. 176–018; El Dorado Irrigation District, Project No. 84–065; Enterprise Mill, LLC, Project No. 2935–015; Fort James Operating Company, Project No. 2312–014; Green Mountain Power Corporation, Project No. 2090–003; Niagara Mohawk Power Corporation, Project No. 2539–003; PacifiCorp, Project Nos. 2342–005, 2659–011, and 2071–013; Pacific Gas & Electric Co., Project Nos. 233–081 and 2105–089; PUD No. 1 of Chelan County, Project No. 637–022; S.D. Warren Company, Project No. 2984–042; Southern California Edison Company, Project No. 2086–035; Stinson Morrison Hecker, LLP, Project No. 2721–013; United Water Conservation District, Project No. 2153–012

September 30, 2005.

A one-day, Commissioner-led workshop will be held on Thursday, December 1, 2005, beginning at 10 a.m. (e.s.t.), in the Commission Meeting Room at the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC. The workshop will focus on the above-listed pending license applications filed at the Commission. The workshop is open to the public and all interested persons are invited to attend and participate.

The goals of the workshop are to: (1) Review and discuss the pending license applications; (2) identify unresolved issues; (3) determine next steps; (4) agree on who will take the next steps; and (5) focus on solutions. The workshop will concentrate on identifying the unresolved issues associated with each project, and determining the best course of action to resolve or remove obstacles to final action on each pending license application.

A transcript of the discussions will be placed in the public record for Docket No. AD05–015–000 and in the record for each of the pending license applications.

Filing Requirements for Electronic or Paper Filings

Comments, papers, or other documents related to this proceeding may be filed electronically or in paper format. Those filing electronically do not need to make a paper filing.

The Commission strongly encourages electronic filings. Documents filed electronically via the Internet must be prepared in MS Word or Portable Document Format. To file the document, access the Commission's Web site at *www.ferc.gov*, click on ''e-Filing'' and then follow the instructions on the screen. First-time users will have to establish a user name and password. The Commission will send an automatic acknowledgment to the sender's e-mail address upon receipt of comments. User assistance for electronic filing is available at (202) 502–8258 or by e-mail to *efiling@ferc.gov.* Comments should not be submitted to the e-mail address.

For paper filings, the original and 8 copies of the comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Paper filings should, at the top of the first page, refer to Docket No. AD05–015–000 and reference the specific project name(s) and project number(s) that the comments concern.

All comments will be placed in the Commission's public files and will be available for inspection in the Commission's Public Reference Room at 888 First Street, NE., Washington, DC 20426, during regular business hours. Additionally, all comments may be viewed on the Commission's Web site at *www.ferc.gov* using the ''eLibrary'' link. For assistance, call toll free 1–866–208–3676, or for TTY (202) 502–8659, or by e-mail to *FERCOnlineSupport@ferc.gov.*

Opportunities for Listening, Participating, and Viewing the Workshop Offsite and Obtaining a Transcript

The workshop will be transcribed. Those interested in transcripts immediately for a fee should contact Ace-Federal Reporters, Inc. at (202) 347–3700, or 1–800–336–6646. Transcripts will be available free to the public on the Commission's e-Library system about two weeks after the workshop.

For those involved in the specific projects to be discussed, we believe the best way to achieve the goals of the workshop is for you and your staff to attend the workshop in person and have an open and frank face-to-face dialogue. However, we understand that budgetary and other constraints may limit travel to Washington, DC. Therefore, we have made alternative arrangements for you to listen, view, or participate in the workshop through the Internet, video conferencing, or teleconferencing.

The Capitol Connection offers the opportunity for remote listening and viewing of the conference. It is available for a fee, live over the Internet, by phone or via satellite. Persons interested in receiving the broadcast, or who need information on making arrangements should contact David Reininger or Julia Morelli at the Capitol Connection (703) 993–3100 as soon as possible or visit the Capitol Connection Web site at *http://www.capitolconnection.org* and click on ''FERC''.

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.

Anyone wishing to participate via teleconference should call or e-mail Kim Nguyen at (202) 502–6105 or *kim.nguyen@ferc.gov* by November 21, 2005, to receive the toll free telephone number to join the teleconference.

Anyone interested in participating in the workshop via video teleconference from one of the Commission's regional offices should call or e-mail the following staff, by November 21, 2005, to make arrangements. Seating capacity is limited.

Regional office	Staff contact	Telephone no.	E-mail address
Atlanta	Charles Wagner	770–452–3765	*charles.wagner@ferc.gov.*

Regional office	Staff contact	Telephone no.	E-mail address
Chicago	Michael Davis	312–596–4434	*michael.davis@ferc.gov.*
New York	Chuck Goggins	212–273–5910	*charles.goggins@ferc.gov.*
Portland	Pat Regan	503–552–2741	*patrick.regan@ferc.gov.*
San Francisco	John Wiegel	415–369–3336	*john.wiegel@ferc.gov.*

By November 21, 2005, an agenda for the workshop and information about the pending license applications will be posted on the Commission's calendar located at *http://www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information. Anyone without access to the Commission's Web site, or who has questions should contact Kim Nguyen at (202) 502–6105, or e-mail *kim.nguyen@ferc.gov.*

Magalie R. Salas,

Secretary.

[FR Doc. E5–5502 Filed 10–5–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2071–013—Washington, Project No. 2111–018—Washington, Project No. 935–053—Washington, Project No. 2071–013—Washington]

Lewis River Projects: PacifiCorp and Cowlitz PUD; Notice of Intention To Hold Public Meetings To Discuss the Draft Environmental Impact Statement for the Lewis River Hydropower Projects

September 28, 2005.

On September 16, 2005, the Commission staff mailed the Lewis River Projects Draft Environmental Impact Statement (DEIS) to the Environmental Protection Agency, resource and land management agencies, and interested organizations and individuals.

Notice of the DEIS was published in the **Federal Register** on September 23, 2005, and comments are due November 23, 2005. The DEIS evaluates the environmental consequences of the construction, operation, and maintenance of the Lewis River Projects in Washington. The DEIS also evaluates the environmental effects of implementing the applicant's proposals, agency and NGO recommendations, staff's modifications, and the no-action alternative.

A public meeting is scheduled for Thursday, October 27, 2005, from 10 a.m. to 3 p.m. (PST) at the Oak Tree Restaurant, 1020 Atlantic Avenue, Woodland, WA 98674.

At this meeting, resource agency personnel and other interested persons will have the opportunity to provide oral and written comments and recommendations regarding the DEIS for the Commission's public record. These meetings will be recorded by an official stenographer.

For further information, please contact Ann-Ariel Vecchio at (202) 502–6351, or by e-mail at *ann-ariel.vecchio@ferc.gov.*

Magalie R. Salas,

Secretary.

[FR Doc. E5–5510 Filed 10–5–05; 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)

September 29, 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: Cynthia A. Marlette and will add the following member: John S. Moot.

Magalie R. Salas,

Secretary.

[FR Doc. E5–5507 Filed 10–5–05; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2005–0274; FRL–7740–3]

AAPCO/SFJREG WC WQ/PD and POM Joint Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Association of American Pesticide Control Officials (AAPCO)/State FIFRA Issues Research and Evaluation Group (SFIREG) Working Committees on Water Quality and Pesticide Disposal (WC/WQPD) and Pesticide Operations and Management Working Committee (POM) will hold a joint 1–day meeting on October 31, 2005 and simultaneously the two committees will hold separate meetings on November 1, 2005. This notice announces the location and times for the meetings and sets forth the tentative agenda topics.

DATES: The meetings will be held on October 31, 2005 from 8:30 a.m. to 5:15 p.m. and November 1, 2005 from 8:30 a.m. to 12 noon.

ADDRESSES: The meetings will be held at the Doubletree Hotel, 300 Army Navy Drive, Arlington, VA 22202

Requests to participate in the meetings may be submitted to the person listed under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: Georgia McDuffie, FEAD (7506C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 605–0195; fax number: (703) 308–1850; e-mail address: *mcduffie.georgia@epa.gov* or Philip H. Gray, (SFIREG) Executive Secretary, P.O. Box 1249, Hardwick, VT 05843–1249; telephone number: (802) 472–6956; fax (802) 472–6957; e-mail address: *aapco@plainfield.bypass.com.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer, or if you are required to conduct testing of chemical substances under the Federal Food, Drug, and Cosmetic Act (FFDCA), or the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Potentially affected entities may include, but are not limited to:

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

• Pesticide manufacturing (NAICS code 32532)

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

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

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2005–0274. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although, a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. 22202. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although, not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

II. Tentative Agenda

The tentative agenda for the meeting(s) includes the following:

1. Synchronizing SFIREG issue actions with EPA budget and planning cycles.
2. OPP performance measures - Goals, overview of process, timetables, discussions on draft performance measures to date, and SFIREG and EPA representatives on the performance measure working group.
3. EPA plans to address pesticide drift.
4. Pesticide container recycling.
5. Pesticide container/containment rule.
6. Underground trickle irrigation.
7. Label review committee priorities.
8. Office of Pesticide Programs and Office of Enforcement and Compliance Assurance Report.
9. Water Quality (WQ) Committee - State Reports: Emerging issues and process revisions.
10. WQ Committee -- Water quality performance measures: Continuing discussion.
11. WQ Committee - New directions for the pesticide water quality program.
12. WQ Committee - End of year reporting for water quality programs and mechanisms to provide state water quality data to EPA.
13. WQ Committee - OPP-Office of Water program interactions: Progress report.
14. WQ Committee - Pesticide degradates: Unregulated contaminant monitoring regulation.
15. Pesticide Operations and Management Committee (POM) - Pesticide labels with unclear endangered species language.
16. POM Committee -- Standardized process for section 18 requests with national concerns.
17. POM Committee - Copyright label issue.
18. POM Committee - Rodenticide labels and 2(ee).
19. POM Committee - Mosquito misting products.
20. POM Committee - Issue papers, identify assignments.

List of Subjects

Environmental protection, Office of Pesticide Programs.

Dated: September 28, 2005.

William R. Diamond,

Director, Field and External Affairs Division, Office of Pesticide Programs.

[FR Doc. 05–20099 Filed 10–5–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7978–7]

Proposed Amendment to CERCLA Section 122(h) Administrative Agreement for the Lower Passaic River Study Area Portion of the Diamond Alkali Superfund Site, Located in and About Essex, Hudson, Bergen and Passaic Counties, NJ

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of settlement and opportunity for public comment.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (''CERCLA''), 42 U.S.C. 9622(i), notice is hereby given of a proposed amendment to an administrative settlement. The settlement will incorporate twelve (12) parties who will be bound to the terms and conditions of the original settlement (which became effective June 22, 2004), thus becoming jointly and severally liable for funding $10,000,000.00 toward the ongoing Remedial Investigation/Feasibility Study (''RI/FS'') of the Lower Passaic River Study Area, along with the thirty-one (31) original Settling Parties. In exchange, these additional Settling Parties will resolve their potential liability for performance of the RI/FS and for Past and Future Response Costs incurred and to be incurred in connection with the RI/FS. Furthermore, all the Settling Parties have committed to paying EPA up to an additional $750,000.00 in contingent funding toward Future Response Costs in the event that EPA needs additional funds to complete the RI/FS. For thirty (30) days following the date of publication of this notice, the EPA will receive written comments relating to the settlement. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the proposed settlement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at the EPA, 290 Broadway, New York, New York 10007–1866.

DATES: Comments must be submitted on or before November 7, 2005.

ADDRESSES: The proposed settlement is available on the web at *http://www.ourpassaic.org.* Comments should reference the Lower Passaic River Study Area/Diamond Alkali Superfund Site,

EPA Index No. CERCLA–02–2004–2011, and should be addressed to the individual identified below.

FOR FURTHER INFORMATION CONTACT: Kedari Reddy, Assistant Regional Counsel, New Jersey Superfund Branch, Office of Regional Counsel, U.S. Environmental Protection Agency, 17th Floor, 290 Broadway, New York, New York 10007. Telephone: (212) 637–3106.

Dated: September 26, 2005.

William McCabe,

Acting Division Director, Emergency & Remedial Response Division.

[FR Doc. 05–20105 Filed 10–5–05; 8:45 am]

BILLING CODE 6560–50–U

FEDERAL ELECTION COMMISSION

Sunshine Act Notices

PREVIOUSLY ANNOUNCED DATE AND TIME: Thursday, October 6, 2005, 2 p.m. meeting open to the public. This meeting has been cancelled.

* * * * *

PERSON TO CONTACT FOR INFORMATION: Mr. Robert Biersack, Press Officer, Telephone: (202) 694–1220.

Mary W. Dove,

Secretary of the Commission.

[FR Doc. 05–20295 Filed 10–4–05; 3:11 pm]

BILLING CODE 6715–01–M

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within ten days of the date this notice appears in the **Federal Register**. Copies of agreements are available through the Commission's Office of Agreements (202–523–5793 or *tradeanalysis@fmc.gov*).

Agreement No.: 011921.

Title: Hapag Lloyd/CP Ships Agreement.

Parties: CP Ships USA, LLC/CP Ships (UK) Limited, and Hapag-Lloyd Container Line GmbH.

Filing Parties: Jeffrey F. Lawrence, Esq., and David F. Smith, Esq.; Sher & Blackwell LLP; 1850 M Street, NW., Suite 900; Washington, DC 20036.

Synopsis: The proposed agreement would authorize the parties to discuss and agree on rates, terms, and conditions in all U.S. trades; share space on each other's vessels; and engage in other cooperative activities. The parties request expedited review.

Dated: October 3, 2005.

By order of the Federal Maritime Commission.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 05–20135 Filed 10–5–05; 8:45 am]

BILLING CODE 6730–01–U

FEDERAL MARITIME COMMISSION

[Docket No. 05–06]

Non-Vessel-Operating Common Carrier Service Arrangements; Extension of Time

The Commission has received and determined to grant a request from the Department of Justice for an extension of time to October 20, 2005 to file comments in this proceeding. Comments will now be due on October 20, 2005.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 05–20136 Filed 10–5–05; 8:45 am]

BILLING CODE 6730–01–U

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

SUMMARY:

Background

Notice is hereby given of the final approval of proposed information collections by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.16 (OMB Regulations on Controlling Paperwork Burdens on the Public). Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the OMB 83-Is and supporting statements and approved collection of information instrument(s) are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer—Michelle Long—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202–452–3829).

OMB Desk Officer—Mark Menchik—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503, or e-mail to *mmenchik@omb.eop.gov.*

Final approval under OMB delegated authority of the extension for three years, with revision of the following reports:

1. *Report title:* Domestic Finance Company Report of Consolidated Assets and Liabilities.

Agency form number: FR 2248.

OMB control number: 7100–0005.

Frequency: Monthly, quarterly, and semi-annually.

Reporters: Domestic finance companies and mortgage companies.

Annual reporting hours: 352 hours.

Estimated average hours per response: Monthly, 18 minutes; quarterly, 25 minutes; semi-annually, 10 minutes.

Number of respondents: 80.

General description of report: This information collection is voluntary (12 U.S.C. 225(a)). Individual respondent data are confidential under section (b)(4) of the Freedom of Information Act (5 U.S.C. 552).

Abstract: The monthly FR 2248 report collects balance sheet data on major categories of consumer and business credit receivables, major short-term liabilities, and securitized assets. For quarter-end months (March, June, September, and December), additional asset and liability items are collected to provide a full balance sheet. If the need arises, a special addendum may be used, no more than semi-annually, for timely information on questions of immediate concern to the Federal Reserve.

The data are used to construct universe estimates of finance company holdings, which are published in the monthly statistical releases Finance Companies (G.20) and Consumer Credit (G.19), in the quarterly statistical release Flow of Funds Accounts of the United States (Z.1), and in the Federal Reserve Bulletin (Tables 1.51, 1.52, and 1.55).

Current Actions: On July 26, 2005, the Federal Reserve issued for public comment proposed revisions to the FR 2248 report (70 FR 43146). The comment period ended on September 26, 2005. The Federal Reserve did not receive any comments. The changes will be implemented as proposed. The Federal Reserve will change the respondent panel definition to include mortgage companies. In addition, the Federal Reserve will instruct finance companies to include the assets and liabilities of their mortgage company subsidiaries. In addition, the Federal

Reserve is concurrently proposed similar revisions on the FR 3033.

The inclusion of mortgage companies will improve estimates of financial flows, particularly household mortgage debt growth, as measured by the Federal Reserve Board's Flow of Funds accounts. Since Housing and Urban Development discontinued its Survey of Mortgage Lending Activity in the late 1990s, the Federal Reserve has been without a regular data source on the activities of mortgage companies. During this time, these firms may have accumulated inventories of loans that the estimates are not measuring. Also, as the front end of the mortgage ''pipeline,'' mortgage companies may at times temporarily hold significant balances of mortgages awaiting securitization or sale. Thus, expanding the scope of the FR 2248 to include mortgage companies will improve the estimate of the overall stock of mortgage debt, and also mitigate likely measurement error in the quarterly flow measures of household debt growth from our failure to observe transitory mortgage holdings of these firms.

2. *Report title:* Quinquennial Finance Company Questionnaire and Survey.

Agency form number: FR 3033.

OMB control number: 7100–0277.

Frequency: One-time.

Reporters: Domestic finance companies and mortgage companies.

Annual reporting hours: Questionnaire, 1,000; survey, 315 hours.

Estimated average hours per response: Questionnaire, 0.25 hours; survey, 0.42 hours.

Number of respondents: Questionnaire, 4,000; survey, 750.

General description of report: This information collection is voluntary (12 U.S.C. 225a, 263, and 353–359). Individual respondent data are confidential under section (b)(4) of the Freedom of Information Act (5 U.S.C. 552).

Abstract: Since June 1955, the Federal Reserve System has surveyed the assets and liabilities of finance companies at five-year intervals. The first stage is a questionnaire (FR 3033p), which is sent to all domestic finance companies. The questionnaire asks for information on each company's total net assets, areas of specialization, and other characteristics. From the universe of FR 3033p questionnaire respondents, the Federal Reserve will draw a stratified random sample of finance companies for the second stage, the survey itself (FR 3033s). The survey will request detailed information, as of December 31, 2005, from both sides of the respondents' balance sheets.

Current Actions: On July 26, 2005, the Federal Reserve issued for public comment proposed revisions to the FR 2248 report (70 FR 43146). The comment period ended on September 26, 2005. The Federal Reserve did not receive any comments. The changes will be implemented as proposed. The Federal Reserve proposed two major revisions: (1) To change the respondent panel definition to include mortgage companies and (2) to instruct finance companies to include the assets and liabilities of their mortgage company subsidiaries. In addition, the Federal Reserve proposed similar revisions on the FR 2248.

The inclusion of mortgage companies will improve estimates of financial flows, particularly household mortgage debt growth, as measured by the Federal Reserve Board's Flow of Funds accounts. Since Housing and Urban Development discontinued its Survey of Mortgage Lending Activity in the late 1990s, the Federal Reserve has been without a regular data source on the activities of mortgage companies. During this time, these firms may have accumulated inventories of loans that the estimates are not measuring. Also, as the front end of the mortgage ''pipeline,'' mortgage companies may at times temporarily hold significant balances of mortgages awaiting securitization or sale. Thus, expanding the scope of the FR 3033 to include mortgage companies will improve the estimate of the overall stock of mortgage debt, and also mitigate likely measurement error in the quarterly flow measures of household debt growth from our failure to observe transitory mortgage holdings of these firms.

3. *Report title:* Application for Membership in the Federal Reserve System.

Agency form number: FR 2083, 2083A, 2083B, and 2083C.

OMB control number: 7100–0046.

Frequency: On occasion.

Reporters: Newly organized banks that seek to become state member banks, or existing banks or savings institutions that seek to convert to state member bank status.

Annual reporting hours: 320 hours.

Estimated average hours per response: 4 hours.

Number of respondents: 80.

General description of report: This information collection is authorized by Section 9 of the Federal Reserve Act (12 U.S.C. 321, 322, and 333) and is required to obtain or retain a benefit. Most individual respondent data are not considered confidential. Applicants may, however, request that parts of their membership applications be kept confidential, but in such cases the applicant must justify its request by demonstrating that disclosure would cause ''substantial competitive harm'' or result in ''an unwarranted invasion of personal privacy.'' Because the confidentiality status of the information submitted will be judged on a case-by-case basis, the forms themselves raise no issues under the Freedom of Information Act, (5 U.S.C. 552).

Abstract: The application for membership is a required one-time submission that collects the information necessary for the Federal Reserve to evaluate the statutory criteria for admission of a new or existing state bank into membership in the Federal Reserve System. This application provides managerial, financial, and structural data.

Current actions: On July 26, 2005, the Federal Reserve issued for public comment proposed revisions to the FR 2083, FR 2083a, FR 2083b, and FR 2083c (70 FR 43146). The comment period ended on September 26, 2005. The Federal Reserve did not receive any comments. Section I of the FR 2083 form will be modified to reflect the Federal Reserve's fingerprint requirement, which differs from that of the other banking agencies. Section II will be modified to clarify certain information that needs to be submitted with a membership proposal. Information about recent or contemplated changes in the management, ownership, or the business plan of an existing bank must be known before action can be taken on a related membership application. The new questions in Section II about new principal ownership, anticipated changes in management of applicant (or applicant's parent company), and management plans for the bank do not represent new information requirements, but rather information that has always been gathered as part of the overall review of a membership proposal.

The FR 2083A and 2083B will be modified so that they request the same capital and surplus data as of the bank's most recent (Consolidated Reports of Condition and Income (Report of Condition) (FFIEC 031 and 041; OMB No. 7100–0036) or a contemplated merger or consolidation date) as requested in the Application for Federal Reserve Bank Stock (FR 2030; OMB No. 7100–0042). The FR 2083B also will be modified to eliminate a reference to the most recent examination of the applying bank by the Reserve Bank; it will now refer only to the most recent Report of Condition for deposit information. The FR 2083C will be modified to include

more signature lines as the current four lines are often not sufficient.

Three sections of the General Information and Instructions of the FR 2083 will be modified to recognize new sources of available information, provide other practical advice to an applicant, and ensure further consistency with other applications. The Preparation of Application section has been modified to reflect that the Federal Reserve's public Web site now contains substantial filing information, including relevant regulations, which an applicant may find helpful when preparing a membership filing. As in other application filing instructions, the applicant is encouraged to consult with the appropriate Reserve Bank about the informational needs of a specific membership proposal. The section also recognizes a new requirement adopted by the Federal Reserve in May 2003 that an individual associated with a banking proposal may need to submit fingerprint cards as part of the name check process. Also, to ensure proper handling of a filing, applicants are encouraged to clearly identify when expedited processing is being sought. All of the proposed revisions to the Confidentiality and Compliance sections are to ensure consistency with the bank holding company application and notifications forms. The Application for Prior Approval to Become a Bank Holding Company or for a Bank Holding Company to Acquire an Additional Bank or Bank Holding Company (FR Y–3), the Notification for Prior Approval to Become a Bank Holding Company or for a Bank Holding Company to Acquire an Additional Bank or Bank Holding Company (FR Y–3N), and the Notification for Prior Approval to Engage Directly or Indirectly in Certain Nonbanking Activities (FR Y–4) (OMB No. 7100–0121).

4. *Report title:* Applications for Subscription to, Adjustment in the Holding of, and Cancellation of Federal Reserve Bank Stock

Agency form number: FR 2030, FR 2030a, FR 2056, FR 2086, FR 2086a, FR 2087

OMB control number: 7100–0042

Frequency: On occasion

Reporters: National, state member, and nonmember banks

Annual reporting hours: FR 2030: 27 hours; FR 2030a: 13 hours; FR 2056: 775 hours; FR 2086: 4 hours; FR 2086a: 19 hours FR 2087: 2 hours

Estimated average hours per response: 0.5 hours

Number of respondents: FR 2030: 54; FR 2030a: 25; FR 2056: 1,550; FR 2086: 7; FR 2086a: 37 FR 2087: 4

General description of report: These information collections are required to obtain or retain a benefit.

- FR 2030 and FR 2030a: (12 U.S.C. 222, 282, 248(a) and 321)
- FR 2056: (12 U.S.C. 287, 248(a) and (i))
- FR 2086: (12 U.S.C. 287, 248(a) and (i))
- FR 2086a: (12 U.S.C. 321, 287, 248(a))
- FR 2087: (12 U.S.C. 288, 248(a) and (i))

Most individual respondent data are not considered confidential. Applicants may, however, request that parts of their membership applications be kept confidential, but in such cases the applicant must justify its request by demonstrating that disclosure would cause ''substantial competitive harm'' or result in ''an unwarranted invasion of personal privacy.'' Because the confidentiality status of the information submitted will be judged on a case-by-case basis, the forms themselves raise no issues under the Freedom of Information Act, (5 U.S.C. 552).

Abstract: These application forms are required by the Federal Reserve Act and Regulation I. These forms must be used by a new or existing member bank (including a national bank) to request the issuance, and adjustment in, or cancellation of Federal Reserve Bank stock. The forms must contain certain certifications by the applicants, as well as certain other financial and shareholder data that is needed by the Federal Reserve to process the request.

Current actions: On July 26, 2005, the Federal Reserve issued for public comment proposed revisions to the FR 2056 and FR 2086a (70 FR 43146). The comment period ended on September 26, 2005. The Federal Reserve did not receive any comments. There are no changes to four of the six application forms (the FR 2030, 2030a, 2086, and 2087). The changes proposed for the other two forms (the 2056, and 2086a) are generally technical in nature. The FR 2056 and its attachment will be modified to allow for their usage by a mutual savings bank (which currently has no adjustment form) and to ensure that the correct capital and surplus data is provided when the requested adjustment relates to a proposed merger or consolidation. The modifications will allow this form to be used by a member bank that survives the merger or consolidation of two member banks, an adjustment not clearly addressed by the current stock forms. The FR 2086a also will be slightly modified to reflect that it could be used by a member bank that is eliminated during the merger or consolidation of two member banks for the cancellation of its Federal Reserve Bank stock.

Board of Governors of the Federal Reserve System, September 30, 2005.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 05–20031 Filed 10–5–05; 8:45 am]

BILLING CODE 6210–01–U

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center Web ite at *http://www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 31, 2005.

A. Federal Reserve Bank of St. Louis (Glenda Wilson, Community Affairs Officer) 411 Locust Street, St. Louis, Missouri 63166–2034:

1. First Banks, Inc., Hazelwood, Missouri; to acquire an additional 8.52 percent, for a total of 24.99 percent, of the voting shares of Community West Bancshares, Goleta, California, and thereby indirectly acquire voting shares of Community West Bank, National Association, Goleta, California.

2. Fortune Financial Corporation, Arnold, Missouri; to become a bank holding company by acquiring 100 percent of the voting shares of FortuneBank, Arnold, Missouri (in organization).

Board of Governors of the Federal Reserve System, October 3, 2005.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E5–5490 Filed 10–5–05; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center Web site at *http://www.ffiec.gov/nic/*.

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Board of Governors of the Federal Reserve System, October 3, 2005.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E5–5491 Filed 10–5–05; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL TRADE COMMISSION

[File No. 051 0115]

The Procter & Gamble Company and The Gillette Company; Analysis of Agreement Containing Consent Orders to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before October 29, 2005.

ADDRESSES: Interested parties are invited to submit written comments. Comments should refer to ''Procter & Gamble, *et al.*, File No. 051 0115,'' to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission/ Office of the Secretary, Room 159–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments containing confidential material must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with Commission Rule 4.9(c). 16 CFR 4.9(c) (2005).[1] The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions. Comments that do not contain any nonpublic information may instead be filed in electronic form as part of or as an attachment to email messages directed to the following email box: *consentagreement@ftc.gov.*

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments, whether filed in paper or electronic form, will be considered by the Commission, and will be available to the public on the FTC Web site, to the extent practicable, at *http://www.ftc.gov.* As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC Web site. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm.*

FOR FURTHER INFORMATION CONTACT: Norman Armstrong, Jr., Bureau of Competition, 600 Pennsylvania Avenue, NW., Washington, DC 20580, (202) 326–2072.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and § 2.34 of the Commission Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for September 30, 2005), on the World Wide Web, at *http://www.ftc.gov/os/2005/09/index.htm.* A paper copy can be obtained from the FTC Public Reference Room, Room 130–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326–2222.

Public comments are invited, and may be filed with the Commission in either

[1] The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* Commission Rule 4.9(c), 16 CFR 4.9(c).

paper or electronic form. All comments should be filed as prescribed in the **ADDRESSES** section above, and must be received on or before the date specified in the **DATES** section.

Analysis of Agreement Containing Consent Order to Aid Public Comment

I. Introduction

The Procter & Gamble Company (''P&G'') and The Gillette Company (''Gillette'') are both leading suppliers of consumer products worldwide. P&G proposes to acquire Gillette. The Federal Trade Commission (''Commission'') has accepted, subject to final approval, an Agreement Containing Consent Orders (''Consent Agreement'') from P&G and Gillette. The purpose of the Consent Agreement is to remedy the anticompetitive effects that would otherwise result from P&G's proposed acquisition. Under the terms of the Consent Agreement, the parties will be required to divest: (1) Gillette's Rembrandt® at-home teeth whitening business; (2) P&G's Crest® SpinBrush™ battery-powered and rechargeable toothbrush business; and (3) Gillette's Right Guard® men's antiperspirant/deodorant (''AP/DO'') business. In addition, P&G is required to amend its joint venture agreement with Philips Oral Healthcare, Inc. (''Philips'') regarding the Crest® Sonicare® IntelliClean System (''IntelliClean'') rechargeable toothbrush.

The proposed Consent Agreement has been placed on the public record for thirty (30) days to solicit comments from interested people. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the proposed Consent Agreement and the comments received, and will decide whether it should withdraw from the proposed Consent Agreement or make it final.

Pursuant to an Agreement and Plan of Merger dated January 27, 2005, P&G proposes to acquire 100 percent of the voting securities of Gillette in a transaction valued at approximately $57 billion (''Proposed Acquisition''). The Commission's Complaint alleges that the Proposed Acquisition, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, by lessening competition in the United States markets for the research, development, manufacture, distribution, and sale of at-home teeth whitening products, adult battery-powered toothbrushes, rechargeable toothbrushes, and men's AP/DOs.

Consistent with the well-established approach to merger analysis, we have determined the appropriate product markets in which to analyze the likely competitive effects of the proposed merger. Staff initially examined whether the combination of the two companies' broad array of consumer products would be likely to have anticompetitive effects, including not only increased prices in the short term but also the creation of entry barriers that could affect price and innovation in the long term. In particular, staff investigated whether the combined entity would have an increased ability to exploit its position as a so-called ''category manager'' or ''category captain,'' in order to obtain premium retailer shelf space and potentially exclude or disadvantage competitors in various broad categories, like oral care or AP/DO.

The investigation has disclosed, however, that most retailers do not look at broad categories, like oral care and AP/DO, when they decide which products to stock and sell. They generally make decisions on individual products (*e.g.*, men's AP/DO), that are perceived to be close substitutes within these broad categories. One supplier may be preferred for an individual product even though another supplier is preferred for other products in the broad category. Moreover, most retailers are likely to employ different category captains to assist them on a product-by-product basis within the broad categories. We have therefore concluded that the loss of competition between the merging parties in broad categories is unlikely to cause competitive harm. We have instead focused on individual products within the broad categories. These individual product markets include at-home teeth whitening, battery-powered toothbrushes, and men's AP/DO. The Commission has sought and obtained relief in these relevant markets.

II. The Parties

Headquartered in Cincinnati, Ohio, P&G is one of the largest and most diversified suppliers of consumer products in the world. In 2004, P&G had worldwide net sales of approximately $51.4 billion. With its Crest® line of products, P&G is one of the leading suppliers of oral care products in the United States. The Crest family of products includes the Crest® Whitestrips™ and Crest® Night Effects™ lines of at-home teeth whitening products and the Crest® SpinBrush™ line of battery-powered toothbrushes. P&G is also a leading supplier of men's AP/DOs under its Old Spice® brand.

Gillette, based in Boston, Massachusetts, is also one of the world's leading suppliers of consumer products. Gillette had total worldwide net sales of approximately $10.5 billion in its 2004 fiscal year. Like P&G, Gillette is one of the leading suppliers of oral care products in the United States with its Oral-B® and Oral-B® Braun® line of manual, battery-powered, and rechargeable toothbrushes, and its Oral-B® Rembrandt® and Rembrandt® line of at-home teeth whitening products. Gillette is also a leading supplier of men's AP/DOs under its Right Guard® and Gillette® Series brands.

III. At-Home Teeth Whitening Products

One of the relevant markets in which to assess the competitive effects of the Proposed Acquisition is the United States market for at-home teeth whitening products. At-home teeth whitening products whiten teeth by bleaching them with either hydrogen or carbamide peroxide. These products are typically sold over-the-counter through food, drug, club, and mass merchandise channels and are marketed to be used by the consumer at home. There are several different types of at-home teeth whitening products, including strips, gels, pens and sticks, although strip and gel products account for the vast majority of sales of at-home teeth whitening products in the United States.

The United States market for at-home teeth whitening products is highly concentrated, with P&G and Gillette as the two largest suppliers in this market and the only two significant suppliers of branded strips. P&G is the market leader with its Crest Whitestrips® and Crest Night Effects® products, while Gillette is the second leading supplier with its Oral-B® Rembrandt® and Rembrandt® products. Together, the parties account for over 80% of the sales in this market.

The Proposed Acquisition would significantly increase concentration in the United States market for at-home teeth whitening products, leaving P&G as the dominant supplier. By eliminating competition between the two leading suppliers, the Proposed Acquisition would likely result in higher prices, reduced innovation, and fewer product choices for consumers in this market.

IV. Adult Battery-Powered Toothbrushes

A second relevant product market in which to assess the competitive effects of the Proposed Acquisition is the United States market for adult battery-powered toothbrushes. Adult battery-

powered toothbrushes are usually powered by AA or AAA batteries and either have oscillating or pulsating brush heads. The majority of adult battery-powered toothbrushes are sold at retail for between $5 and $8, and the batteries and brush heads can be replaced on some, but not all, products. Adult battery-powered toothbrushes are typically marketed as upgrades over manual toothbrushes and are more affordable than sophisticated rechargeable toothbrushes.

The United States market for adult battery-powered toothbrushes is highly concentrated. P&G and Gillette are the two largest suppliers in this market. P&G markets its adult battery-powered products under the Crest® SpinBrush™ brand name, while Gillette sells its adult battery-powered products under the Oral-B® brand name. Gillette also dominates the adult high-priced manual and low-priced rechargeable toothbrush segments, which are the segments most likely to capture any switching away from adult battery-powered toothbrushes in the face of a price increase. Together, the parties account for over 85% of the sales in the United States adult battery-powered toothbrush market.

The Proposed Acquisition would significantly increase concentration in the United States market for adult battery-powered toothbrush products, leaving P&G as the dominant supplier. By eliminating competition between the two leading suppliers, the Proposed Acquisition would likely result in higher prices, reduced innovation, and fewer product choices for consumers in this market.

V. Rechargeable Toothbrushes

A third relevant product market in which to assess the competitive effects of the Proposed Acquisition is the United States market for rechargeable toothbrushes. Rechargeable toothbrushes contain a rechargeable battery that powers high-speed oscillating, pulsating, or vibrating brush heads. They have a separate recharging unit that plugs into an electrical outlet to recharge the battery contained in the toothbrush. Brush heads for these products are almost always replaceable. Rechargeable toothbrushes typically are sold at retail for between $20 and $150, and are marketed as the premium brushing option for consumers.

The United States market for rechargeable toothbrushes is highly concentrated with only two suppliers, Gillette and Philips, accounting for virtually all of the sales of these products. Gillette markets a full line of rechargeable toothbrush products under the Oral-B® Braun® brand name, while Philips sells mostly mid-to high-end products under the Philips® Sonicare® brand name. Philips and P&G also have a joint venture to co-develop and co-market the IntelliClean product, the first integrated toothbrush/dentifrice product (*i.e.*, toothbrush that self dispenses toothpaste) sold in the United States. As a result, the Proposed Acquisition would allow P&G to acquire the only significant competitor to its joint venture partner, Philips, thereby reducing P&G's incentives to support the IntelliClean product. The agreement between Philips and P&G also contains non-compete provisions that, if the Proposed Acquisition were consummated, could harm consumers.

The Proposed Acquisition would eliminate P&G's incentive to fully support and promote the IntelliClean product and create a situation where the only two suppliers in the market are subject to non-compete provisions. Accordingly, the Proposed Acquisition would likely result in higher prices, reduced innovation, and fewer product choices for consumers in this market.

VI. Men's AP/DOs

A fourth relevant product market in which to assess the competitive effects of the Proposed Acquisition is the United States market for men's AP/DOs. An antiperspirant is a substance that is used to prevent or reduce underarm sweating. A deodorant is a substance that is used to suppress underarm odor. These ingredients are typically combined together for complete underarm protection. AP/DOs are typically gender-specific and sold in various forms, including roll-ons, traditional solids, invisible solids, gels, and aerosols. Men's AP/DOs are unique in, among other things, their packaging, fragrances, marketing, formulations, and location on the shelf.

The United States market for men's AP/DOs is highly concentrated. P&G and Gillette are the two largest suppliers of men's AP/DOs in the United States. P&G markets its men's AP/DOs under the Old Spice® brand name, while Gillette sells its products under the Right Guard® and Gillette Series' brand names. Combined, the Respondents account for well over 50% of the sales in this highly concentrated market.

Accordingly, the Proposed Acquisition would significantly increase concentration in the United States market for men's AP/DOs, leaving P&G as the dominant supplier. By eliminating competition between the two leading suppliers, the Proposed Acquisition would likely result in higher prices and fewer product choices for consumers in this market.

VII. Entry

Entry into the United States at-home teeth whitening, adult battery-powered toothbrush, rechargeable toothbrush, and men's AP/DO markets is unlikely to deter or counteract the anticompetitive effects of the Proposed Acquisition. Entry into these markets is difficult and time-consuming and would require the investment of extremely high sunk costs to, among other things, develop products, provide advertising and promotional funding, establish a strong brand name, and create a distribution network. A new entrant also faces the difficult task of convincing retailers to carry their products.

VIII. The Consent Agreement

The Consent Agreement effectively remedies the Proposed Acquisition's anticompetitive effects in the relevant markets discussed above. The Consent Agreement preserves competition in these markets by requiring the divestiture of: (1) The Rembrandt at-home teeth whitening business to a Commission-approved acquirer; (2) the Crest SpinBrush battery-powered business to Church & Dwight Company, Inc. (''Church & Dwight''); and (3) the Right Guard business to a Commission-approved acquirer.[2] In addition, the Consent Agreement requires P&G to amend its joint venture agreement to allow Philips to independently market and sell the IntelliClean product.

The divestiture of the Rembrandt business must take place within three (3) months and the Right Guard business within four (4) months after the date the order becomes final. The Commission's goal in evaluating possible purchasers of divested assets is to ensure that the competitive environment that existed prior to the acquisition is maintained. A proposed acquirer of divested assets must not itself present competitive problems. Should the parties fail to accomplish the divestiture within the time and in the manner required by the Consent Agreement, the Commission may appoint a trustee to divest these assets. If approved, the trustee would have the exclusive power and authority to accomplish the divestiture within one year of being appointed, subject to any necessary extensions by the Commission. The Consent Agreement

[2] The Rembrandt business that will be divested includes all of Gillette's existing and future teeth whitening products. For viability reasons, the purchaser of the Right Guard business will have the option of acquiring certain manufacturing assets and/or Gillette's Soft & Dri® and Dry Idea® assets.

requires the parties to provide the trustee with access to information related to, among other things, the Rembrandt and Right Guard businesses as necessary to fulfill his or her obligations.

The Order to Maintain Assets that is included in the Consent Agreement requires that P&G and Gillette maintain the viability of the Rembrandt and Right Guard businesses as competitive operations until the businesses are transferred to Commission-approved acquirers.[3] The Commission has approved Edward Gold of PricewaterhouseCoopers as the Interim Monitor pursuant to the Consent Agreement to ensure that P&G and Gillette comply with the provisions of the Order.

There are also several provisions of the Consent Agreement designed to ensure the success of the divestiture of the Crest SpinBrush business to Church & Dwight. First, the Consent Agreement requires P&G to divest its rights and assets relating to adult battery-powered toothbrushes, including all research and development data, sales and marketing materials, and intellectual property. Second, P&G will provide Church & Dwight with a license to the Crest trademark, subject to minimum protections under trademark law, for use with the SpinBrush brand name that will be acquired outright by Church & Dwight. These provisions are designed to ensure that Church & Dwight can successfully transition the Crest SpinBrush family of products to a brand name of its choosing. Third, the Consent Agreement allows, and provides incentives for, P&G to render transitional services to Church & Dwight and retailers for a period of time to ensure the continuity and competitive viability of the products.

The Commission is satisfied that Church & Dwight is a well-qualified acquirer of the Crest SpinBrush business. Church & Dwight sells a variety of consumer products throughout the world, including oral care, personal care, and household products, and had total worldwide net sales of approximately $1.5 billion in 2004. The company owns several well-known oral care brands, such as Arm & Hammer®, Aim®, and Mentadent™, and currently sells a variety of oral care products, including toothpaste and manual toothbrushes. Because of its existing business, Church & Dwight already has an experienced sales force that has relationships with major retailers and dental professionals, thereby enabling it to be a successful acquirer of the SpinBrush assets.

The Consent Agreement also requires P&G to amend its joint venture agreement with Philips regarding IntelliClean. The amended agreement, which is an attachment to the order, allows Philips to independently market and sell IntelliClean. The amended agreement also eliminates all non-compete provisions allowing both P&G and Philips to develop and sell future rechargeable toothbrush products.

The purpose of this analysis is to facilitate public comment on the Consent Agreement, and is not intended to constitute an official interpretation of the proposed Decision and Order or the Order to Maintain Assets, or to modify their terms in any way.

By direction of the Commission, with Chairman Majoras and Commissioner Harbour recused.

Donald S. Clark,

Secretary.

[FR Doc. 05–20043 Filed 10–5–05; 8:45 am]

BILLING CODE 6750–01–U

[3] The Order to Maintain Assets also requires that P&G and Gillette maintain the viability of the Soft & Dri and Dry Idea businesses.

FEDERAL TRADE COMMISSION

[File No. 052 3136]

Superior Mortgage Corporation; Analysis of Proposed Consent Order To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of Federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

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

ADDRESSES: Interested parties are invited to submit written comments. Comments should refer to ''Superior Mortgage, File No. 052 3136,'' to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission/Office of the Secretary, Room 159-H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments containing confidential material must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with Commission Rule 4.9(c). 16 CFR 4.9(c) (2005).[1] The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions. Comments that do not contain any nonpublic information may instead be filed in electronic form as part of or as an attachment to e-mail messages directed to the following e-mail box: *consentagreement@ftc.gov.*

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments, whether filed in paper or electronic form, will be considered by the Commission, and will be available to the public on the FTC Web site, to the extent practicable, at *http://www.ftc.gov.* As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC Web site. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm.*

FOR FURTHER INFORMATION CONTACT: Jessica Rich, Bureau of Consumer Protection, 600 Pennsylvania Avenue, NW., Washington, DC 20580, (202) 326–3224.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and § 2.34 of the Commission Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for September 28, 2005), on the World Wide Web, at *http://*

[1] The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. See Commission Rule 4.9(c), 16 CFR 4.9(c).

www.ftc.gov/os/2005/09/index.htm. A paper copy can be obtained from the FTC Public Reference Room, Room 130–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326–2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. All comments should be filed as prescribed in the **ADDRESSES** section above, and must be received on or before the date specified in the **DATES** section.

Analysis of Agreement Containing Consent Order To Aid Public Comment

The Federal Trade Commission has accepted a consent agreement, subject to final approval, from Superior Mortgage Corp. (''Superior Mortgage''). Superior Mortgage is a mortgage lender specializing in residential mortgage loans with headquarters in Tuckerton, New Jersey. Superior Mortgage collects sensitive customer information, including customer names, Social Security numbers, credit histories, and bank and credit card account numbers, and is a ''financial institution'' subject to the Gramm-Leach-Bliley Act's Standards for Safeguarding Customer Information Rule, 16 CFR part 314 (''Safeguards Rule'').

The proposed consent order has been placed in the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action or make final the agreement's proposed order.

This matter concerns Superior Mortgage's alleged violations of the Safeguards Rule, as well as alleged security misrepresentations to consumers on Superior Mortgage's Web site. The Safeguards Rule, which became effective on May 23, 2003, requires financial institutions to implement reasonable policies and procedures to ensure the security and confidentiality of customer information, including:

- Designating one or more employees to coordinate the information security program;
- Identifying reasonably foreseeable internal and external risks to the security, confidentiality, and integrity of customer information, and assessing the sufficiency of any safeguards in place to control those risks;
- Designing and implementing information safeguards to control the risks identified through risk assessment, and regularly testing or otherwise monitoring the effectiveness of the safeguards' key controls, systems, and procedures;
- Overseeing service providers, and requiring them by contract to protect the security and confidentiality of customer information; and
- Evaluating and adjusting the information security program in light of the results of testing and monitoring, changes to the business operation, and other relevant circumstances.

The Commission's complaint alleges that Superior Mortgage failed to implement the protections required by the Safeguards Rule and, specifically, that it failed to: (1) Assess risks to its customer information until more than a year after the Safeguard Rule's effective date; (2) institute appropriate password policies to control access to company systems and documents containing sensitive customer information; (3) encrypt or otherwise protect sensitive customer information before sending it by e-mail; and (4) take reasonable steps to ensure that its service providers were providing appropriate security for customer information and addressing known security risks in a timely fashion.

The complaint also alleges that Superior Mortgage violated section 5 of the Federal Trade Commission Act (''FTC Act'') by representing that the personal information it obtained from consumers through *http://www.supmort.com* was encrypted using SSL from the time of submission until receipt by Superior Mortgage, when in fact that information was encrypted only while it was being transmitted between a visitor's Web browser and the Web site's server (using SSL); once the information reached the server, it was decrypted and e-mailed to Superior Mortgage's headquarters and branch offices in clear, readable text.

The proposed order contains provisions designed to prevent Superior Mortgage from future practices similar to those alleged in the complaint. Specifically, part I of the proposed order prohibits Superior Mortgage from misrepresenting the extent to which it maintains and protects the privacy, confidentiality, or security of any personal information collected from or about consumers. Part II of the proposed order prohibits Superior Mortgage from violating the Safeguards Rule. Part III of the proposed order requires that Superior Mortgage obtain, within 180 days after being served with the final order approved by the Commission, and on a biennial basis thereafter for ten (10) years, an assessment and report from a qualified, objective, independent third-party professional, certifying that: (1) Superior Mortgage has in place a security program that provides protections that meet or exceed the protections required by the Safeguards Rule, and (2) Superior Mortgage's security program is operating with sufficient effectiveness to provide reasonable assurance that the security, confidentiality, and integrity of nonpublic personal information has been protected. This provision is substantially similar to comparable provisions obtained in prior Commission orders under the Safeguards Rule and Section 5 of the FTC Act. See, e.g., Sunbelt Lending Servs., Inc., FTC Docket No. C–4129 (Jan. 7, 2005); Tower Records, FTC Docket No. C–4110 (June 2, 2004).

Part III of the proposed order also requires Superior Mortgage to retain documents relating to compliance. For the assessments and supporting documents, Superior Mortgage must retain the documents for three (3) years after the date that each assessment is prepared.

Parts IV through VII of the proposed order are reporting and compliance provisions. Part IV requires dissemination of the order now and in the future to persons with supervisory responsibilities. Part V ensures notification to the FTC of changes in corporate status. Part VI mandates that Superior Mortgage submit compliance reports to the FTC. Part VII is a provision ''sunsetting'' the order after twenty (20) years, with certain exceptions.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the proposed order or to modify its terms in any way.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 05–20042 Filed 10–5–05; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

[Document Identifier: OS–0990–0268]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Office of the Secretary; HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the

Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed collection for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Regular Clearance, Extension of a currently approved collection.

Title of Information Collection: Service Use and Transition of Private Long-Term Care Insurance.

Form/OMB No.: OS–0990–0268.

Use: This is a longitudinal study of an admission cohort of private long-term care insurance claimants. A representative sample of claimants from nine companies will be followed for twenty months to better understand how they select and use services.

Frequency: Reporting.

Affected Public: Individuals or households.

Annual Number of Respondents: 1,650.00.

Total Annual Responses: 6,755.00.

Average Burden per Response: ½ hour.

Total Annual Hours: 3,720.00.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access the HHS Web site address at *http://www.hhs.gov/oirm/infocollect/pending/* or e-mail your request, including your address, phone number, OMB number, and OS document identifier, to *naomi.cook@hhs.gov*, or call the Reports Clearance Office on (202) 690–6162. Written comments and recommendations for the proposed information collections must be received with 60-days, and directed to the OS Paperwork Clearance Officer at the following address:

Department of Health and Human Services, Office of the Secretary, Assistant Secretary for Budget, Technology, and Finance, Office of Information and Resource Management, Attention: Naomi Cook (0990–0268), Room 531–H, 200 Independence Avenue, SW., Washington DC 20201.

Dated: September 28, 2005.

Robert E. Polson,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. 05–20102 Filed 10–5–05; 8:45 am]

BILLING CODE 4150–39–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–05–0134]

Proposed Data Collections Submitted for Public Comment and Recommendations

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 371–5983 or send an e-mail to *omb@cdc.gov*. Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395–6974. Written comments should be received within 30 days of this notice.

Proposed Project

Foreign Quarantine Regulations, OMB No. 0920–0134—Revision—National Center for Infectious Diseases (NCID), Centers for Disease Control and Prevention (CDC).

Background and Brief Description:

Section 361 of the Public Health Service (PHS) Act (42 U.S.C. 264) authorizes the Secretary of Health and Human Services (DHHS) to make and enforce regulations necessary to prevent the introduction, transmission, or spread of communicable diseases from foreign countries into the United States. Legislation and the existing regulations governing foreign quarantine activities (42 CFR part 71) authorize quarantine officers and other personnel to inspect and undertake necessary control measures with respect to conveyances, persons, and shipments of animals and etiologic agents entering the United States from foreign ports in order to protect the public health.

Under foreign quarantine regulations, the master of a ship or captain of an airplane entering the United States from a foreign port is required by public health law to report certain illnesses among passengers (42 CFR 71.21)(b). In this revision, CDC proposes adding two additional reporting requirements. First, in addition to the aforementioned list of required illnesses to be reported, CDC is asking that reports be made for the following conditions, which may indicate a reportable illness: (1) Hemorrhagic fever syndrome (persistent fever accompanied by abnormal bleeding from any site); or (2) acute respiratory syndrome (severe cough or severe respiratory disease of less than 3 weeks in duration); or (3) acute onset of fever and severe headache, accompanied by stiff neck or change in level of consciousness. CDC has the authority to collect personal health information to protect the health of the public under the authority of section 301 of the Public Health Service Act (42 U.S.C.).

Second, CDC proposes adding the Passenger Locator Form currently under OMB control number 0920–0664 to OMB control number 0920–0134. The Passenger Locator Form is used to collect reliable information that assists quarantine officers in locating in a timely manner those passengers and crew who are exposed to communicable diseases of public health importance while traveling on a conveyance. Additional burden hours for the voluntary reporting of additional certain illnesses and the Passenger Locator Form are reflected in the burden hour table below. DHHS delegates authority to CDC to conduct quarantine control measures. Currently, with the exception of rodent inspections and the cruise ship sanitation program, inspections are performed only on those vessels and aircraft which report illness prior to arrival or when illness is discovered upon arrival. Other inspection agencies assist quarantine officers in public health screening of persons, pets, and other importations of public health significance and make referrals to PHS when indicated. These practices and procedures assure protection against the introduction and spread of communicable diseases into the United States with a minimum of recordkeeping and reporting as well as a minimum of interference with trade and travel.

Respondents include airplane pilots, ships' captains, importers, and travelers. The nature of the quarantine response would dictate which forms are completed by whom. There are no costs to respondents except for their time. The total estimated annual burden hours are 225,759.

ESTIMATED ANNUALIZED BURDEN TABLE

Citation	Form number/ former OMB#	Number of respondents	Number of responses per respondent	Average burden per respondent (in hours)
Reporting:				
71.21 Radio report death/illness		9,500	1	2/60
71.33(c) Report by person/s in isolation or surveillance		11	1	3/60
71.35 Report of death/illness in port		5	1	30/60
Used in an outbreak of public health significance	0920–0664	2,700,000	1	5/60
Used for reporting of an ill passenger(s)	0920–0664	800	1	5/60
71.51(b)(3) Admission of cats/dogs: death/illness		5	1	3/60
71.51(d) Dogs/cats: certification of confinement, vaccination	CDC 75.37	1,200	1	15/60
71.52(d) Turtle importation permits		10	1	30/60
71.53(d) Importer registration—nonhuman primates	CDC 75.10A	40	1	10/60
Total (Reporting)		2,711,571		
Recordkeeping:				
71.53(e)		30	4	30/60

Dated: September 30, 2005.

Betsey Dunaway,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 05–20054 Filed 10–5–05; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60 Day–05–05CX]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–371–5983 and send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov.*

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

A Survey of University Field Biology Training Programs to Assess Zoonosis Education, Animal Handling and Personal Protective Equipment Training—New—Centers for Disease Control and Prevention (CDC), National Center for Infectious Diseases (NCID).

Background and Brief Description

Field Biologists and members of allied disciplines (Ecology, Conservation Biology, Wildlife Biology, Mammalogy, etc.) frequently come in contact with wild animals, many of which may carry diseases transmissible to humans (zoonotic diseases). Examples of these diseases include Rabies, Hantavirus Pulmonary Syndrome, Leptospirosis, Tularemia and many others. The recent death of a Wildlife Sciences graduate student from occupationally-acquired Hantavirus Pulmonary Syndrome highlights the vulnerability of this population to zoonotic diseases. The graduate student's exposure was thought to be due to inadequate understanding of the risk of zoonotic disease and need for proper animal handling and personal protective equipment (PPE) use.

Throughout the field biology community, there are no universally accepted standards for zoonosis risk reduction education, safe animal handling or PPE use. While it may be difficult to re-train seasoned biologists who have established habits related to animal handling and PPE use, new members of the community (*i.e.* undergraduate and graduate students) may represent an opportunity for timely intervention. By developing proper animal handling and PPE use habits early in their careers, field biologists can minimize their exposure to potentially fatal zoonotic illnesses.

The proposed survey asks 85 Department Chairs (or Program Directors, as surrogates) of university training programs in field-related biological sciences about their programs' policies regarding zoonotic disease education, safe animal handling training, and PPE training and use. The survey consists of an introductory letter and a self-administered, Web-based questionnaire e-mailed to persons at universities in the United States. The study objectives are to describe current knowledge, attitudes and practices of educational institutions and their faculty regarding zoonotic disease risks and protection of undergraduate and graduate students, and to determine what types of national guidelines on zoonotic disease risk reduction in university training programs are needed. If these data were not collected, it would make it more difficult to create logical and appropriate national guidelines for zoonotic risk reduction in university training programs. This data collection supports the CDC's broader research agenda of understanding the determinants of illness in vulnerable populations. There is no cost to the respondents other than their time.

ESTIMATE OF ANNUALIZED BURDEN TABLE

Respondents	Number of respondents	Number of responses per respondent	Average burden per response	Total burden (in hours)
Surveys	85	1	10/60	14.0
Total				14.0

Dated: September 30, 2005.

Betsey Dunaway,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 05–20062 Filed 10–5–05; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Statement of Organization, Functions, and Delegations of Authority

Part C (Centers for Disease Control and Prevention) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Service (45 FR 67772–76, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 70 FR 55859–55860, dated September 23, 2005) is amended to reflect the establishment of the Office of the Chief of Staff, Office of the Director, Centers for Disease Control and Prevention.

After the mission statement for the *Office of Chief of Public Health Practice (CAR)*, insert the following:

Office of the Chief of Staff (CAT), The Office of the Chief of Staff (OCS) provides leadership, coordination and management of agency-wide policies and issues, directs operations for the Office of the Director, coordinates senior leadership and provides direct to the director to serve CDC and its people and ensure decisions are made in the agency's best interest. In carrying out its mission, OCS: (1) Coordinated policy and program issues across the Office of the Director (OD), coordinating centers and coordinating offices, centers, and staff offices in collaborating with the Office of Enterprise Communication (OEC); (2) provides integrated policy analysis and strategic consultation to the Director and senior leadership on major issues affecting CDC; (3) identifies, triages, supervises and tracks OD action items from start to finish in conjunction with senior leadership across CDC, specifically OEC; (4) serves as one of the Director's primary strategic liaisons with staff partners and the community at large; (5) manages budget and resources and provides operations oversight for selected staff offices within the OD; (6) directs Office of the Director operations and administration; (7) serves as a primary point of contact to select OD-level partners in conjunction with other pre-established points of contact across CDC; (8) serves as a primary point of contact with the CDC Foundation, specifically for coordination and decision support with other pre-established points of contact across CDC; (9) oversees all activities related to the Advisory Committee to the Director and its subcommittees and workgroups; (10)coordinates and manages select activities between CDC and the Department of Health and Human Services; (11) manages senior staff with the OD such as staff on long-term training, details, intergovernmental personnel actions, etc.; (12) manages the Executive Leadership Board (ELB) and CIO Leadership Council (CLC), inclusive of preparing for and conducting ELB and CLC meetings and identifying, triaging, supervising and tracking action items stemming from ELB and CLC meetings; (13) provides senior management information, as necessary, to make timely strategic and operational decisions; (14) manages OD-level special events and VIP visits; (15) coordinates and manages implementation of the Freedom of Information Act for CDC, including receiving and tracking requests and composing responses.

Dated: September 29, 2005.

William H. Gimson,

Chief Operating Officer, Centers for Disease Control and Prevention (CDC).

[FR Doc. 05–20056 Filed 10–5–05; 8:45 am]

BILLING CODE 4160–18–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Statement of Organization, Functions, and Delegations of Authority

Part C (Centers for Disease Control and Prevention) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772–76, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 70 FR 55859–55860, dated September 23, 2005) is amended to reflect the establishment of the Office of Enterprise Communication, within the Office of the Director, Centers for Disease Control and Prevention.

Section C–B, Organization and Functions, is hereby amended as follows:

Delete in its entirety the titles and functional statements for the *Office of the Executive Secretariat (CAH)* and the *Office of Program Planning and Evaluation (CA4).*

Revise the functional statement for the *Management Analysis and Policy Branch (CAJ64), Management Analysis and Services Officer (CAJ6), Office of the Chief Operating Officer (CAJ),* be deleting item (3) of the functional statement and renumber the remaining items accordingly.

After the mission statement for the *Office of Chief of Public Health Practice (CAR),* insert the following:

Office of Enterprise Communication (CAU). The mission of the Office of Enterprise Communication (OEC) is to assure the Centers for Disease Control and Prevention's (CDC) leadership role in promoting public health and preventing disease by fostering an enterprise-wide culture that ensures coordination and prompt response to urgent issues and concerns; anticipating and elevating issues that shape the agency's position; upholding and safeguarding our credibility and the confidence of employees, partners and public; and promoting effective and efficient communication networks. To carry out its mission, OEC: (1) Plans,

directs, coordinates, and facilitates communication activities related to policy issues and situations with serious and cross-cutting potential organizational impact; (2) provides leadership, technical assistance, and consultation to the agency's coordinating centers/coordinating offices (CC/CO), national centers (NC), and offices in reputational risk communication and reputational management; (3) provides leadership, technical assistance, and consultation to the agency's CC/COs, NCs, and offices in establishing best business communication practices and strategic principles to maximize effectiveness; (4) conducts environmental scanning to determine emerging threats to the agency's reputation; (5) implements external communication strategies to promote and protect the agency's brand; (6) provides guidance on best practices in internal and external communication; (7) assists the CC/COs, their NCs, and partners in identifying and building needed expertise and state-of-the-art technology, logistical support, and other capacities required for effective external and internal policy/public affairs communication, and media relations; (8) positions the agency to respond quickly, fairly, openly, and honestly to challenges and potential problems; (9) maintains liaison with officials from the Department of Health and Human Services (DHHS), other federal and state public health agencies, and private sector organizations to coordinate communication programs and strategies of mutual concern; and (10) identifies and promotes the use of the latest information technologies to support and coordinate CDC's enterprise-wide communication efforts throughout the CC/COs.

Office of the Director (CAU1). (1) Ensures CDC communication activities follow policy directions established by DHHS; (2) establishes and interprets policies and determines priorities for communicating the value and benefits of CDC programs; (3) establishes, administers, and coordinates CDC's media relations policies in a manner to ensure that communication efforts reflect the scientific integrity of all CDC research, programs, and activities, and that such information is factual, accurate, and targeted toward improving public health; (4) provides leadership and guidance on developing and implementing external public relations strategies to communicate upward and outward to customers, partners, and other stakeholders; (5) provides leadership and guidance on developing and implementing internal public relations strategies to communicate to the agency's workforce; (6) facilitates coordination throughout the agency to ensure the use of consistent and repetitive messages that achieve awareness and understanding; (7) facilitates coordination throughout the agency to ensure the distribution of messages through the right channels and to the appropriate audience; (8) provides guidance on leadership communication effectiveness; (9) provides leadership in the development and implementation of proactive strategies and practices for effective issue management and public affairs activities; (10) provides leadership and guidance in using efficient and transparent processes to communicate the decision-making activities of CDC's leadership; (11) facilitates the activation of situation-specific teams of experts and specialists to develop and implement communication strategies to respond to, and resolve, controversial public issues, influence public attitude and perception, and support and promote the business of the agency in a scientific and positive manner; and (12) creates and maintains liaisons with the Coordinating Centers' Enterprise Communication Officers and Strategy and Innovation Officers, Executive Leadership Board, CDC Foundation, and Emergency Communications System to monitor and respond to issues that are a threat to the business of the agency.

CDC Connects (CAU12). (1) Designs, plans, organizes, develops, and implements employee communications activities; (2) plans, develops, writes, and edits articles about employees and their work; (3) provides channel for publicizing employee achievements and awards, program accomplishments, and introducing management; (4) provides centralized access to all tools and information held on the Intranet; (5) provides the central point of contact to CDC for the CDC Intranet; (6) provides the central point of reference for CDC announcements; (7) provides the policy review and clearance of materials to be posted on CDC Connects; (8) provides leadership in the development and branding of CDC's Intranet sites/pages; (9) creates and maintains liaison with the CC/COs and NCs to share information about employee communication; (10) develops strategies for CDC's leaders in developing and disseminating information through CDC Connects; (11) coordinates with the DHHS on CDC Intranet and CDC Connects activities; (12) assists the CC/COs and NCs in meeting their employee communication needs and priorities; (13) provides training and technical assistance to CDC staff about employee communication via CDC Connects, and provides timely and appropriate responses to inquiries and feedback from CDC employees; (14) conducts special programs as appropriate to develop feature stories; (15) conducts employee research to enhance and improve CDC Connects and other channels of employee communication; and (16) provides employees access to information systems, services, and materials that support or promote their health, morale, and work efficiency.

Division of Policy Analysis and Coordination (CAUB). (1) Identifies emerging or cross-cutting policy issues and serves as a catalyst in advancing action; (2) analyzes and contributes to the development of key policy issues; (3) consults with the CDC Director, OEC Director, CDC Leadership Team, CC/COs, and NCs on policy-related issues; (4) serves as the focal point for the policy analysis, technical review, and final clearance of correspondence and policy documents that require approval from the CDC Director and the CDC Leadership Team, and for a wide variety of documents that require the approval of various officials within DHHS; (5) acts as a primary liaison between CDC and the DHHS Office of the Secretary; (6) provides a forum for discussion and decision-making on policy-related issues; (7) manages the flow of decision documents and correspondence for action by the CDC Director; (8) coordinates Inspector General and General Accounting Office audit activities; (9) maintains all official records relating to the decisions and official actions of the CDC Director; and (10) ensures consistent application of CDC correspondence standards and styles.

Division of Media Relations (CAUC). (1) Plans, organizes, administers, and, when appropriate, implements CDC's media activities consistent with policy direction established by the Assistant Secretary for Public Affairs, DHHS; (2) provides leadership in the development of CDC's priorities, strategies, and practices for effective media relations; (3) provides for the content, policy review, and clearance of media materials including press releases, press kits, talking points, letters to editors, and fact sheets; (4) provides the public, through media channels, access to information systems, services, and materials that support or promote the health of individuals and communities; (5) manages and responds to media requests for access to subject matter experts, reports, and publications; (6) assists the CC/COs, NCs, offices, and their constituents in identifying and

building needed expertise, technology, logistical support, and other capacities required for effective media relations; (7) creates and maintains liaison with the CC/COs, NCs, and offices to share information about media relations, encouraging and providing opportunities for CDC-wide collaboration; (8) develops media plans and strategies for the CDC Director and other CDC leaders in developing and disseminating information through the media; (9) coordinates the development, review, clearance, and dissemination of media information among CC/COs and NCs, and between CDC and DHHS; (10) assists CC/COs and NCs in meeting their press-related needs and priorities; (11) provides media training and technical assistance to CDC staff; (12) provides the central point of contact to CDC for media representatives; (13) provides timely, thorough, and appropriate responses to inquiries by media representatives; (14) conducts special activities as appropriate to develop relationships with media representatives; and (15) periodically evaluates CDC's media relations operations, activities, and services, including feedback from internal users, journalists, and consumers.

Dated: September 23, 2005.

William H. Gimson,

Chief Operating Officer, Centers for Disease Control and Prevention (CDC).

[FR Doc. 05–20055 Filed 10–5–05; 8:45 am]

BILLING CODE 4160–18–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Statement of Organization, Functions, and Delegations of Authority

Part C (Centers for Disease Control and Prevention) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772–76, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 70 FR 55859–55860, dated September 23, 2005), is amended to reflect the reorganization of the Financial Management Office, within the Office of the Chief Operating Officer Centers for Disease Control and Prevention.

Section C–B, Organization and Functions, is hereby amended as follows:

Revise the functional statement for the *Financial Management Office (CAJ2), Office of the Chief Operating Officer (CAJ),* as follows:

Delete in their entirety the titles and functional statements for the *Cincinnati Accounting Section (CAJ222),* the *Debt and Property Management Section (CAJ223),* and the *General Ledger Section (CAJ224).*

Delete the functional statements for the *Financial Management Office (CAJ2),* the *Office of the Director (CAJ21),* the *Accounting Branch (CAJ22),* the *Budget Execution Branch (CAJ23),* the *Budget Oversight and Analysis Activity (CAJ232),* the *Budget Execution Services Activity (CAJ233),* and the *Financial Services Branch (CAJ26),* and insert the following:

Financial Management Office (CAJE). (1) Provides leadership and coordination in the development and administration of the Centers for Disease Control and Prevention's (CDC) financial management policies; (2) develops budget submissions for CDC; (3) collaborates with the CDC Office of the Director (OD) in the development and implementation of long-range program and financing plans; (4) participates in budget reviews and hearings; (5) manages CDC's system of internal budgetary planning and control of funds; (6) develops and implements CDC-wide budgetary, accounting, and fiscal systems and procedures; (7) conducts CDC-wide manpower management (including productivity measurement) activities; and provides accounting services; (8) prepares financial reports; (9) serves as the focal point for domestic and international travel policy, procedures and interpretation; (10) provides legislation reference services; (11) plans, directs, and conducts internal quality assurance reviews; (12) analyzes data and makes recommendations to assure effective safeguards are in place to prevent fraud, waste and abuse; (13) assists in identifying or conducting special financial management training programs; and (14) maintains liaison with the Department of Health and Human Services (DHHS), Office of Management and Budget, Congress, and other government organizations on financial management matters.

Office of the Director (CAJE1). (1) Provides leadership and guidance in all areas of financial management; (2) serves as a CDC witness in budget hearings before Committees of Congress, OMB, and DHHS; (3) participates with top management in program planning and policy determinations, evaluations, conferences, and decisions, concerning financial resources; (4) provides a centralized source for current information on financial management legal and regulatory requirements governing the prevention and control of diseases; (5) advises the CDC Chief Operating Officer (OCOO) concerning reprogramming of funds; and (6) provides consultation and assistance in financial management to State and local health departments when requested by CDC officials.

Accounting Branch (CAJEB). (1) In conjunction with the Budget Execution Branch, develops accounting policies and procedures for CDC; (2) provides financial information for management purposes, effective control, and accountability of all funds, and suitable integration of CDC accounting with the accounting operations of the Department of the Treasury; (3) coordinates activities of the Accounting Branch with the Financial Management Office (FMO) Director, Budget Execution Branch, Budget Formulation and Public Health Policy Branch, Financial Services Branch, and Financial Systems Branch; (4) coordinates accounting policy issues with the DHHS Office of Financial Policy; (5) reviews and develops accounting systems to comply with requirements of DHHS and the General Accounting Office (GAO), and maintains an integrated system of accounts to meet the budgetary and accounting requirements of CDC; (6) reviews and implements the legal, accounting, and reporting requirements of the Chief Financial Officer's Act, the Federal Managers' Financial Integrity Act, the Principles of Federal Appropriation Law, and other regulatory requirements; (7) compiles all accounting information for the 5 Year Financial Management Plan, which provides CDC's financial management vision and objectives for the ensuing 5 year period; (8) develops strategies for employee training and professional development; and (9) compiles and submits the annual financial statements for inclusion in the DHHS Performance and Accountability Report.

Budget Execution Branch (CAJEC). (1) Promotes structured, ongoing partnerships between the Coordinating Centers/Coordinating Offices (CC/CO), national centers (NC), and FMO leadership, lead budget analysts, and budget execution staff; (2) provides leadership, consultation, guidance, and advice on budgetary matters for CDC through senior advisory leadership roles in partnership with FMO and the Directors of CC/COs and NCs; (3) provides submission and execution of the CDC budget within the framework of DHHS, OMB, and Congressional regulations, and policies of the CDC OD; (4) supports the functions provided by

the Budget Oversight and Analysis Activity and the Budget Execution Services Activity; (5) provides leadership, consultation, guidance, and advice on financial policy and internal quality assurance matters for CDC; (6) develops, analyzes, and evaluates financial management policies, guidelines, and services which have CDC-wide impact; (7) works with personnel from all disciplines within CDC to identify the areas in which financial policy needs to be strengthened; (8) reviews, assesses, and recommends financial policy that is consistent with internal controls and the hierarchy of federal and DHHS policies and procedures; (9) ensures that resources are safeguarded against fraud, waste, and abuse, managed economically and efficiently, and that desired results are achieved; (10) reviews and independently assesses the soundness, adequacy, and application of budgetary and accounting controls; (11) reviews the reliability and integrity of financial and budget information, and the means used to identify, measure, classify, and report such information; (12) reviews the adequacy and effectiveness of systems and procedures having an impact on expenditures of funds and use of resources; and (13) assesses the reliability and accuracy of accounting and budgetary data and reports.

Budget Oversight and Analysis Activity (CAJEC2). (1) Supports the formulation and budget analysis oversight of CDC's annual budget, and provides agency-level and departmental budget execution functions and reporting; (2) oversees budget execution services provided to terrorism and stockpile, global health, workforce career development, and OD/OCOO functions; (3) develops standard operating procedures for budget processes, collaborates with the Chief Learning Officer and Corporate University to develop appropriate training for Budget Execution staff in the areas of budget analysis, accounting, program analysis, and business systems tools to develop proficiency in daily operations, and provides technical assistance in the interpretation of rules and regulations.

Budget Execution Services Activity (CAJEC3). (1) Provides budget execution services to CC/COs and NCs; (2) coordinates budget services through formalized and integrated communication with CC/COs and NC programs throughout its service offering to ensure effective and efficiently delivery of services to its customers; and (3) supports the formulation of NC annual budgets, develops spending plans, and manages budget execution activities ensuring funds are expended in accordance with Congressional intent.

Financial Services Branch (HCAJEE). (1) Develops and implements policies and procedures for all accounts payable, disbursement, and travel functions at CDC; (2) coordinates activities of the Financial Services Branch with FMO's Director, Accounting Branch, Budget Execution Branch, Budget Formulation and Public Health Policy Branch, and Financial Systems Branch; (3) coordinates the development of new financial systems to automate accounts payable and disbursement operations, and maintains and serves as the CDC focal point on all existing automated payment and disbursement systems; (4) reviews obligation documents and payment requests from a variety of private sector and government sources to determine the validity and legality of the requests, and provides electronic authorization to the Department of the Treasury to issue checks or electronic funds transfers for valid payment requests; (5) compiles and submits a variety of cash management and travel reports required by the Department of the Treasury and various other outside agencies; (6) acts as liaison with the NCs and outside customers to provide financial information, resolve problems, and provide training and information on payment, travel, and disbursement issues; (7) serves as the CDE subject matter expert on all financial matters dealing with international travel, assignments, and payments; and (8) analyzes internal reports to provide management information on topics such as interest expenses, workload, and various other performance indicators.

After the functional statement for *Payment and Travel Services Section (CAJEES3)*, insert the following:

Budget Formulation and Public Health Policy Branch (CAJEG). (1) Provides leadership, consultation, guidance, and advice on matters of budget formulation, public health policy development, budget and performance integration, and Congressional appropriations for CDC and the Agency for Toxic Substances and Disease Registry; (2) develops the CDC budget in accordance with DHHS, OMB, and Congressional requirements, policies, procedures, and regulations; (3) maintains liaison with the Office of the Secretary, OMB, GAO, other government organizations, and Congress on financial management matters; (4) develops materials for, and participates in, budget reviews and hearings before DHHS, OMB, and Congress; (5) provides leadership, consultation, guidance, and advice in implementing performance systems, including the Performance Assessment and Rating Tool assessments, Key Performance Indicators, and CDC's Government Performance Results Act program; and (6) collaborates with other parts of CDC in the development and implementation of long-range program and financing plans.

Dated: September 2, 2005.

William H. Gimson,

Chief Operating Officer, Centers for Disease Control and Prevention (CDC).

[FR Doc. 05–20059 Filed 10–5–05; 8:45 am]

BILLING CODE 4160–18–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Statement of Organization, Functions, and Delegations of Authority

Part C (Centers for Disease Control and Prevention) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772–76, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 70 FR 55859–55860, dated September 23, 2005) is amended to reflect the establishment of the Coordinating Office for Global Health at the Centers for Disease Control and Prevention.

Section C–B, Organization and Functions, is hereby amended as follows:

Delete in its entirety the title and functional statement for the *Office of Global Health (CAB).*

After the mission statement for the Coordinating Center for Infectious Diseases (CV), insert the following:

Coordinating Office for Global Health (CW). The mission of the Coordinating Office of Global Health (COGH) is to provide leadership and work with partners around the globe to: (1) Increase life expectancy and years of quality life, especially among those at highest risk for premature death, particularly vulnerable children and women, and (2) increase the global preparedness to prevent and control naturally-occurring and man-made threats to health. To carry out its mission, COGH (1) fosters collaborations, partnerships, integration, and resource leveraging to increase the Centers for Disease Control and Prevention's (CDC) health impact and achieve global health goals; (2) assesses

evolving global health issues; (3) provides strategic direction to support CDC's global health activities; (4) identifies and develops activities where CDC's technical expertise maximizes public health impact; (5) stimulates research and program development by disseminating information acquired through ongoing global health initiatives; (6) strengthens global capacity in areas such as public health workforce and systems development; and (7) coordinates cross-cutting CDC global health activities.

Office of the Director (CWA). (1) Manages, directs, and coordinates the activities of the office; (2) provides global business management and strategic planning support to achieve its objectives with measurable results; (3) provides leadership in the formulation and implementation of CDC's global health strategy, and facilitates the development of strategic partnerships in support of the goals; (4) coordinates CDC's legislative agenda and activities related to global public health; (5) provides leadership in policy formation, program operations, strategic direction, and fiscal oversight; (6) administers CDC's global disease detection program through coordination with relevant implementing programs; (7) coordinates CDC's global science and public health practice activities; (8) formulates and implements CDC's strategy for global workforce and career development; and (9) coordinates global health communication issues across CDC.

Office of Capacity Development and Program Coordination (CWB). The Office of Capacity Development and Program Coordination provides agency-wide leadership and coordination to strengthen, assist, and facilitate the implementation of global programs through the Division of Epidemiology and Surveillance Capacity Development and the Sustainable Management Development Program.

Office of the Director (CWB1). (1) Provides leadership and overall direction for the office; (2) provides leadership and guidance on global health program coordination, policy, program planning, program management, operations, and monitoring; (3) provides liaison with other CDC coordinating centers/coordinating offices, national centers, other federal agencies, national ministries of health, and international organizations; and (4) strengthens global public health capacity in the areas of informatics, laboratory, science, program management, epidemiology, and surveillance.

Sustainable Management Development Program (CWB12). (1) Strengthens public health management training capacity by developing a global network of professional management trainers skilled in evidence-based decision-making; (2) conducts needs assessment/planning for the development of regional/national training programs; (3) provides leadership in faculty development in Atlanta; (4) provides or facilities in-country technical assistance for regional/national training programs; (5) provides or facilities support for evaluation and sustainability of management training programs; and (6) collaborates within CDC, and with other national or international-based organizations in support of the Sustainable Management Development Program's mission.

Division of Epidemiology and Surveillance Capacity Development (CWBB). (1) Contributes to improving the health of the people of the United States (U.S.) and other nations by partnering with other national agencies and international organizations to build strong, transparent, and sustained public health systems; assesses, develops, promotes, and strengthens public health systems through training, consultation, capacity building, and other assistance in applied epidemiology, public health surveillance, evaluation, instructional design, and other disciplines needed for health policy formulation, allocation of health resources, direction, and evaluation of public health program operations and effectiveness; (2) provides input into Office of Capacity Development and Program Coordination and COGH policy on health system strengthening and sustainability; and (3) collaborates with other CDC organizations, US government agencies, international agencies, foreign governments, and non-profit organizations in support of COGH's goals and activities.

Office of the Director (CWBB1). (1) Provides leadership and overall direction for the division; (2) provides leadership and guidance on policy, program planning, program management, and operations; (3) plans, allocates, and monitors resources; (4) provides leadership and management oversight in assisting national ministries of health, international agencies, and non-profit organizations in the delivery of epidemiologic services and the development of international epidemiologic networks; and (5) provides liaison with other CDC organizations, other federal agencies, national ministries of health, and international organizations.

Capacity Development Branch (CWBBC). (1) With partners, designs and conducts evidence-based instruction in public health disciplines needed to strengthen their public health systems, including instructional design, epidemiology, surveillance, communications, and economic evaluation; (2) provides consultation to ministries of health in development of surveillance systems (e.g. Integrated Disease Surveillance, injury, chronic diseases, infectious diseases, etc.); (3) creates and maintains computer-based and distance-based learning methods, and develops the capacity of partners to create, evaluate, and share their own; (4) develops and evaluates competency-based training materials; (5) maintains divisional training material library and website; and (6) collaborates within CDC and with other national or international-based organizations in development of competency-based training materials, evaluation of training, and design of surveillance systems needed to accomplish the mission.

Program Development Branch (CWBBC). (1) Assists partners to assess their needs for health systems strengthening; (2) plans, directs, supports, and coordinates field epidemiology and laboratory training programs, Data for Decision Making Projects, and other partnerships with ministries of health; (3) provides leadership and management oversight in assisting ministries of health in training of epidemiologists and other health professionals through the development of competency-based, residency-style, applied training programs; (4) provides leadership and expertise in assisting national ministries of health to utilize trained public health workers for developing health policy, and implementing and evaluating health programs; (5) assigns and manages expert consultants as long-term, in-country advisors to ministry of healthy programs; and (6) collaborates within CDC and with other national and international organizations in support of partner programs.

Office of Global Program Support Services (CWC). The Office of Global Program Support Services provides agency-wide leadership and support for assignments, systems, and operations in the implementing of the global health initiatives. The office's function will provide the foundation for the development and application of consistent and equitable assignments, systems, and operational policies.

Office of the Director (CWC1). (1) Advises the COGH Director on important issues related to assignments,

systems, and operations for international activities impacting programmatic implementation; (2) serves as the focal point for CDC international assignees and travelers; (3) coordinates the operational support services for CDC programs; (4) coordinates and documents international management policy agency-wide with the Department of Health and Human Services and with the Department of State, ascertaining the need for, and proposing, administrative improvements and legislative requirements to improve operations and avoid management problems; (5) coordinates development of policies for overseas management, locally employed staff, and overseas travel; (6) provides government-wide leadership for the working group for the interagency system for management of shared administrative support services (ICASS), overseas building operations and rightsizing liaison, capital security cost sharing reconciliation, and property management (inventory, government-owned vehicles, property management, furniture, furnishing, appliances, equipment); (6) in carrying out the above responsibilities, coordinates activities with coordinating centers/offices/implementing programs, the Office of Global Health Affairs, other governmental and non-governmental organizations, and other partners, as appropriate; (7) administers exchange visitor program, short-term visitors, and immigration activities for CDE; (8) coordinates processes for all overseas staff assignments including family support; and (9) provides agency-wide passport, visa, and clearance services.

Dated: September 2, 2005.

William H. Gimson,

Chief Operating Officer, Centers for Disease Control and Prevention (CDC).

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Statement of Organization, Functions, and Delegations of Authority

Part C (Centers for Disease Control and Prevention) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772–76, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 70 FR 55859–55860, dated September 23, 2005) is amended to reflect the establishment of the national Center for Public Health Informatics within the Coordinating Center for Health Information Service, Centers for Disease Control and Prevention.

Delete in its entirety the titles and functional statements for the *Information Resources Management Office (CAJ5)*.

After the mission statement for the *National Center for Health Statistics (CPC)*, insert the following:

National Center for Public Health Informatics (CPE). The National Center for Public Health Informatics (NCPHI) protects and improves the public's health through discovery, innovation, and service in health information technology and informatics. Informatics can be defined as the collection, classification, storage, retrieval, and dissemination of recorded knowledge. Public health informatics can be defined as the systematic application of information and computer science and technology to public health practice, research and learning. NCPHI assumes a leadership role for CDC in public health informatics and health information technology; ensures progress on CDC information resources, informatics, and health information systems and standards; facilitate cross-national center collaboration on informatics and health information projects; and advances and supports health information and informatics initiatives, systems, and activities across public health.

Office of the Director (CPE1). (1) Plans, directs, coordinates, implements, and manages activities of the National Center for Public Health Informatics; (2) develops and recommends policies and procedures relating to informatics resources management and support services as appropriate; (3) develops vision and strategies for informatics and its application within public health both nationally and internationally; (4) assesses CDC-wide needs for informatics support; (5) collects external input on informatics and applies the knowledge gained to agency decision-making; (6) establishes CDC-wide informatics priorities, including opportunities for redirecting resources to areas of greater impact; (7) provides for the informatics response for cross-cutting urgent and emergent needs; (8) establishes measures of success/effectiveness of CDC informatics activities and provides guidance to CDC programs on applying these measures; (9) evaluates informactics services based on internal and external input; (10) establishes and maintains internal CDC processes for decision making regarding standards, guidelines, policies that have applicability throughout CDC; (11) establishes and ensures the consistent application of the CDC enterprise architecture to align systems and platforms with CDC business objectives and goals and optimize the use of information resources; (12) establishes and ensures the consistent application of the CDC unified process to define a clear approach to deliver successful projects that comply with federal regulations and policies and CDC and Public Health Information Network standards; (13) establishes and ensures the adoption of CDC-wide standards and specifications that facilitate interoperability across sectors and provides consistency of functionality; (14) establishes relationships for public health infromatics across CDC and with state and local public health organizations and other partners on informatics methods, processes, and policies; (15) optimizes the portfolio of CDC's informatics projects and systems, identifying and facilitating opportunities for cross-coordinating center/coordinating office/national center collaboration in order to leverage investments and promote efficiency and integration; (16) promotes the integration of informatics systems (e.g. surveillance) and approaches across CDC; (17) collaborates and coordinates with all CDC organizations on informatics and health information technology issues and works closely with the Chief Information Officer on the interrelationships between informatics and information technology services, security, and information technology capital planning.

Enterprise Architecture Activity (CPE12). (1) Establishes, leads and manages the CDC enterprise information technology program; (2) ensures that the enterprise architecture and its associated standards and specifications are applied properly throughout information resources activities; (3) develops, facilitates and maintains processes and procedures for evaluating and incorporating new technology and standards in CDC's information resource environment; (4) develops and establishes CDC's information resource current, transitional, and future state technology architectures; (5) leads and staffs across-agency Enterprise Architecture Board; (6) represents CDC on Department of Health and Human Services and other federal and health architecture initiatives; (7) provides subject matter expertise on the direction and application of technology; (8) establishes and manages communities of

practices for technology domains; (9) develops and maintains a certification program to ensure partners' solutions are compatible and compliant with Public Health Information Network requirements, standards, and specifications;

Science and Research Activity (PCE13). (1) Sponsors and conducts research on relevant informatics approaches and technologies; (2) manages a repository of CDC and external research on informatics and promotes the use of such research throughout CDC; (3) develops a research agenda on public health informatics as a component of the CDC-wide research agenda; (4) sponsors and conducts research on informatics (e.g. ways of protecting privacy of health records in an electronic environment, extent to which personal health records can be used for public health surveillance, expanded use of access to other non-traditional health data sources); (5) conducts applied research on relevant approaches and technologies (e.g. applying ideas for standards to systems, detection algorithms); (6) conducts systematic reviews of available research results on informatics to ensure that existing knowledge base is available for public health informatics; (7) creates opportunities for innovation (e.g. develop reward systems, establish centers of excellence, fund internal pilot projects); (8) provides guidance and oversight of the practice of science in the center; (9) oversees and provides leadership in center planning, prioritization and evaluation of center research; (10) oversees the science process in the center; (11) facilitates coordination of cross-cutting research in the center; (12) assures the quality, objectivity and integrity of the practice of science in the center; (13) assures external peer review of research; (140 guides the measurement of research impact; (15) guides translation of research to practice; (16) represents the center on the Excellence in Science Committee and other committees.

Program Management Activity (CPE14). (1) Develops vision and strategies for informatics and its application within public health (including opportunities for redirecting and identifying resources to areas of greater impact) and opportunities for cross-coordinating center/coordinating office/national center collaboration; (3) establishes measures of success/effectiveness of CDC informatics activities; (4) establishes and maintains internal CDC processes for decision making regarding metrics, standards, guidelines and policies; (5) develops and manages the CDC Unified Process program for use across the agency; (6) Facilitates and staffs informatics governance activities; (7) coordinates, manages, and optimizes the informatics portfolio of projects and systems; (8) identifies and incorporates best practices for project management within the agency; (9) establishes and manages mentoring programs and communities of practices for project management; (10) evaluates health of projects and recommends areas for improvement; (11) evaluates, designs, and deploys processes, procedures, and systems for project management and system development.

Business Services Office (CPE15). The Business Services Office (BSO) provides the coordinating office with a centralized business hub where customer service and business administration is the focal point of all business support functions. To carry out its mission, the BSO: (1) Develops and implements supplemental and/or unique-to-NCPHI administrative policies and procedures that govern business administration, procurement practices, facilities management, time and attendance reporting, travel, records management, personnel and a wide scope of other business services; (2) plans, coordinates, tracks, and provides management advice and direction of fiscal management for the organization's annual budgets and spending plans; (3) provides consultation on human capital needs and facilitates hiring and training practices as described in Office of Personnel Management and agency guidelines; (4) coordinates and manages all business services related to management, administration, and training for NCPHI; (5) coordinates all issues related to physical security, telecommunications, office space and design, procurement of equipment, furniture, and information technology services, and facilities management; (6) provides assistance to others and independently formulates, develops, negotiates, manages, and administers various NCPHI contracts, grants and cooperative agreements; (7) maintains liaison with the other offices within NCPHI, the coordinating center and other business service divisions and offices within CDC/ATSDR.

Division of Alliance Management and Consultation (CPEB). (1) Establishes and maintains relationships for public health informatics across CDC, with partners and with other health care entities; (2) provides expertise and support to CDC staff, partners, and other health care entities on informatics methods, processes, policies, and standards; (3) promotes health standards and facilitates forums across CDC, sectors, and other federal agencies to ensure efficient data exchange, interoperability of systems, and consistent implementation of methods and policy; (4) advances the development of a workforce skilled in public health informatics by developing and providing training across CDC, to partners, and to other health care entities; (5) promotes the interests of public health in the development of informatics standards (working with federal, state and local, and private sector initiatives and organizations) and initiatives (e.g. electronic health records, networks, the national health information infrastructure) to ensure the availability and utilization of expanded health data for public health purposes; (6) enhances the ability of public health officials to access and use data, information, systems, and technologies collected through traditional and non-traditional information systems, and through developing approaches to allow access while protecting privacy, confidentiality, and intellectual property rights; (7) enhances and maintains partnerships with other federal agencies, state and local public health departments, national organizations, health plans, care networks, and regional health information networks to meet public health informatics needs.

Division of Knowledge Management Services (CPEC). (1) Identifies and assesses possible informatics solutions for knowledge management and pursues appropriate direction for the solution; (2) develops, implements, and maintains, knowledge management solutions that enable efficient delivery, sharing, collaboration, management, and presentation of information and knowledge; (3) develops, implements and maintains knowledge management solutions that enable efficient delivery, sharing, collaboration, management, and presentation of information and knowledge; (4) delivers credible, timely information from scientific and health literature to CDC scientists, the public health community, and the general public by delivering reference services and access to published resources, evaluating, acquiring, organizing and making available knowledge resources, and providing training and consultation in use of science and health literature.

Division of Informatics Shared Services (CPED). (1) identifies needs and opportunities for components that can be utilized across multiple informatics solutions to ensure interoperability, integration and consistency and pursues appropriate direction for the solution (i.e., buy commercially available, re-use or build new); (2) develops, implements

and maintains underlying components that enable the integration of solutions which address cross-cutting CDC or partner objectives; (3) identifies the need and opportunities for components (*e.g.* messaging specification, vocabulary, public health directory, secure data transfer) that could be utilized across multiple informatics solutions to ensure interoperability, integration, and consistency; (4) manages and allocates shared contractor resources (*e.g.* security, usability, quality assurance testing, developers, database administrators); (5) manages umbrella contracting and other common carrier mechanisms to achieve information solutions; (6) develops standards, quality assurance procedures, and guidelines for effective and efficient approaches to applications development and database management.

Division of integrated Surveillance Systems and Services (CPEE). (1) Identifies and assesses informatics solutions for integrated surveillance nationally and internationally and pursues appropriate direction for the solution; (2) develops, implements and maintains common platforms, enterprise-wide systems and applications for integrated solutions that address cross-cutting CDC or partner objectives; (3) develops, manages and supports integrated health surveillance, information and operational solutions to facilitate activities such as surveillance, lab reporting, analysis and tracking, visualization, reporting and inventory management.

Division of Emergency Preparedness and Response (CPEG). (1) Identifies and assesses informatics solutions for emergency preparedness and response and pursues appropriate direction for the solution; (2) ensures that capacity exists for responding to urgent and emergent needs; (3) develops, manages, and supports emergency preparedness and response solutions to facilitate activities such as outbreak investigation, event detection and monitoring, and response (e.g. flu vaccine finder) and ensures capacity for responding to urgent and emergent needs; (4) develops and manages early disease detection and characterization systems, situational awareness systems and related analytic activities (e.g the biointelligence center, aberration detection algorithms).

Dated: September 27, 2005.

William H. Gimson,

Chief Operating Officer, Centers for Disease Control and Prevention (CDC).

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Statement of Organization, Functions, and Delegations of Authority

Part C (Centers for Disease Control and Prevention) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772–76, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 70 FR 55859–55860, dated September 23, 2005) is amended to reflect the establishment of the National Center for Health Marketing within the Coordinating Center for Health Information and Service, Centers for Disease Control and Prevention.

Section C–B, Organization and Functions, is hereby amended as follows:

Delete in its entirety the titles and functional statements for the *Epidemiology Program Office (CB),* the *Office of Communication (CAA),* and the *Public Health Program Office (CH).*

After the mission statement for the *Office of the Director (CPA), Coordinating Center for Health Information and Service (CP),* insert the following:

National Center for Health Marketing (CPB). The National Center for Health Marketing (NCHM) ensures that health information, interventions, and programs are based on sound science, objectivity, and continuous customer input; are designed to be accessible, appropriately packaged, released in a timely manner, and delivered to customers, organizations, and target populations through the most appropriate and effective channels and partners; and, are rigorously evaluated to measure impact on individual and organizational perceptions and decisions about health, as well as health outcomes across all life stages. In carrying out this mission, the NCHM: (1) Ensures that the Centers for Disease Control and Prevention (CDC) has the necessary data about its customers to develop information, interventions, and programs that respond to customers' needs, values, and uses; (2) ensures that CDC employs innovative and rigorous strategies for reaching its customers based on audience and communication research; (3) provides value-added, cross-cutting scientific support that ensures that the best available public health science is rapidly and reliably translated into effective practice and policy; (4) ensures efficient, focused use of CDC's expertise and mechanisms for delivering health information and services; (5) ensures that customers will have effective, real-time access to needed health and safety information, interventions, and programs through communication channels they prefer; (6) ensures effective strategic partnerships and alliances to extend CDC's reach; (7) increases public awareness and partner actions to enhance the public health infrastructure; (8) helps people understand what public health is as well as its relevance and value to people across all life stages; (9) promotes and facilitates efforts to measure progress toward agency goals and evaluates the impact of agency program; (10) accesses, promotes, and conducts marketing and prevention research; (11) develops and evaluates strategies for providing information, programs, and services; (12) develops and tests communication messages and programs for public and professional audiences; (13) develops and coordinates high-priority partnerships; (14) delivers CDC information and services to the public; (15) manages marketing-related shared services (e.g., channels, graphics) and in carrying out the above functions, collaborates, as appropriate, with other national centers (NC) of CDC; (16) fosters the development and/or improvement of methods by which the partnership of federal, state, and local public health agencies can assure the coordinated and effective establishment of priorities and responses to public health problems; (17) maintains a forum for communication, coordination, collaboration, and consensus among the NCs of CDC, public agencies, and private organizations concerned with ensuring the quality of public health practice; (18) works collaboratively with academic institutions, especially schools of public health and departments of preventive medicine, to develop and evaluate prevention practices; (19) provides a central service for consultation and the design, production, and evaluation of media and instructional services to support CDC's delivery of public health messages; and (20) provides consultation, technical assistance on health information systems, scientific communications, and development of community health practice guidelines to CDC and the Agency for Toxic Substances and Disease Registry (ATSDR), states, other agencies, and domestic and international organizations.

Office of the Director (CPB1). (1) Manages, directs, coordinates, and

evaluates the activities of the NCHM; (2) develops goals and objectives, and provides leadership, policy formation, scientific oversight, and guidance in program planning and development; (3) coordinates assistance provided by NCHM to other CDC components, other federal, state, and local government agencies, and the private sector; and (4) chairs the NCHM Marketing Council.

Office of Business Services (CPB13). The Office of Business Services (OBS) provides a centralized business hub where customer service and business administration is the focal point of all business support functions. The OBS: (1) Develops and implements supplemental, and/or unique to NCHM, administrative policies and procedures that govern business administration, procurement practices, facilities management, time and attendance reporting, travel, records management, personnel, and a wide scope of other business services; (2) plans, coordinates, tracks, and provides management advice and direction of fiscal management for the organization's annual budgets and spend plans; (3) provides consultation on human capital needs and facilitates hiring and training practices as described in the Office of Personnel Management and agency guidelines; (4) coordinates and manages all business services related to management, administration, and training for NCHM; (5) coordinates all issues related to physical security, telecommunications, office space and design, procurement of equipment, furniture, information technology (IT) services, and facilities management; (6) provides assistance in formulating, developing, negotiating, managing, and administering various NCHM contracts, grants, and cooperative agreements; and (7) maintains liaison with the other offices within NCHM, the Coordinating Center for Health Information and Services, and other business service divisions and offices within CDC/ATSDR.

Division of Health Communication (CPBC). (1) Establishes, administers, and coordinates CDC's health communication policies in a manner to ensure that health communication efforts reflect the scientific integrity of all CDC research, programs, and activities, and that such information is factual, accurate, and targeted toward improving public health; (2) plans, organizes, administers, and, when appropriate, implements CDC's health communication programs consistent with policy direction established by the Department of Health and Human Services (DHHS); (3) provides leadership in the development of CDC's priorities, strategies, and practices for effective health communication; (4) provides a CDC-wide forum for the discussion, development, and adoption of health communication policies and procedures; (5) provides for the policy review and clearance of informational health communication materials, including talking points and fact sheets; (6) provides the public and targeted audiences, through communication channels, access to information systems, services, and materials that support or promote the health of individuals and communities; (7) plans, coordinates, and provides for appropriate CDC presence at national and major venues; (8) promotes, stimulates, conducts, and supports research on health communication topics of CDC-wide interest; (9) assists and supports the NCs of the agency in conducting formative processes, and outcome research and evaluation in specific applications of health communication to program areas; (10) assists the NCs and their constituents in identifying and building needed expertise and state-of-the-art technology, logistical support, and other capacities required for effective health communications; (12) promotes quality assurance in health communication programs, products, and initiatives; (13) systematically captures, assesses, and disseminates information on health communication research results and current or emerging trends and issues; (14) maintains liaison with officials from DHHS, other federal and state public health agencies, and nonprofit and voluntary health agencies to coordinate health communication programs of mutual interest and concern; (15) creates and maintains liaison with NCs to share information about health communication programs, identifying and ensuring opportunities for CDC-wide collaboration; (16) provides leadership for, and ensures coordination of, emergency and terrorism communication; (17) provides venues to educate the public, target audiences, and schoolchildren about public health and the advances contributed by CDC, other public health science programs; (18) operates the CDC Visitor and Education Center and touring/visiting the CDC exhibit program; and (19) develops, identifies, and implements strategies for translation and delivery of CDC health communication information to the public and key target audiences for maximum health impact.

Office of the Director (CPBC1). (1) Advises the Director, NCHM, the CCHIS, and the NCs on all matters related to health communication; (2) ensures that CDC communication activities follow policy directions established by the Assistant Secretary for Public Affairs (DHHS); (3) develops and coordinates CDC-wide policies and plans for health communication; (4) provides leadership in the development of CDC's priorities, strategies, and practices for effective health communication activities; (6) assures that CDC is effectively using all communication channels available to promote health communication messages; (7) ensures appropriate CDC presence at national and major venues to provide education and communication to the public and target audiences; (8) establishes strategy and oversight for emergency communication efforts; (9) produces periodic reports and publications; (10) manages CDC's health communication services to the public; (11) maintains liaison with officials of other federal agencies, voluntary health agencies, and state agencies to coordinate communication programs of mutual concern; and (12) provides facilitation for the CDC Visitor and Education Center and touring/visiting the CDC exhibit program.

Communication Interventions and Consultation Branch (CPBCB). (1) Identifies and implements strategies for translation and delivery of CDC information to key targeted audiences for maximum health impact; (2) identifies and pursues opportunities for bundling, embedding, and joint dissemination of CDC information to more effectively reach audiences; (3) monitors and refines (strategies) messages based on feedback mechanisms; (4) establishes measures of success/effectiveness of CDC information efforts and provides guidance to CDC programs on applying these measures; (5) ensures that ''lessons learned'' from evaluation are fed back into strategies for subsequent communication campaigns, information releases, delivery, and other communication projects; (6) ensures analytic function for interpretation of data from centralized marketing databases, sources of environmental scanning, and communication literature for use in development and implementation of strategies for communication activities; (7) evaluates the reach and effectiveness of CDC communication activities and products; (8) pursues or consults on the development and design of CDC communications campaigns, media buys, public service announcements (PSA), and other CDC information; (9) ensures that the content of CDC scientific communications is accessible (available, understandable, actionable)

to the public and target audiences; (10) tailors science-based information for key sector audiences using knowledge of the interests and level of scientific sophistication of those audiences; (11) ensures that CDC's face to the outside world (through communication campaigns, information releases, and other communication projects) is consistent with overall CDC brand/identity strategies as set by marketing unit; (12) systemically integrates a broad spectrum of information on the policy environment, public attitudes, and related public and private initiatives that relate to CDC programs to improve health and safety, including information on health determinants; (13) brings an integrated marketing perspective to data collection and CDC data resources, bringing data from various sources to develop a more complete picture of the public and its health concerns/interests, and to address cross-cutting issues; (14) provides for efficient, agency-wide access to consumer-oriented databases that can help support public health marketing; (15) provides for systematic mechanisms for gaining public input on health issues and priorities (e.g., advisory mechanisms, focus groups, polling, legislative and media tracking) and for the systematic application of knowledge gained from such input into agency decision-making; (16) sponsors/initiates original research on: customer needs and interests; CDC's brands/reputation/image/ influence; needs and interests of key sectors and partners; audience segmentation; approaches to bundling and packaging of CDC offerings (information and products); methods for measuring effectiveness; communication to and about health systems/services research; and, effectiveness of messages and channels; (17) manages a repository of CDC and external research on the effectiveness of programs and interventions (both for public and sector audiences), and promotes the use of such evidence throughout CDC; and (18) provides consultation and/or access to functions 1–17 to ensure effective, consistent health communication programs at the NC level for specific NC health communication projects or issues.

Emergency Communication Branch (CPBCC). (1) Identifies and implements strategies for translation and delivery of CDC information related to national emergencies or terrorism events to key targeted audiences for maximum health impact; (2) identifies and pursues opportunities for bundling, embedding, and joint dissemination of CDC information related to national emergencies or terrorism events to more effectively reach audiences; (3) monitors and refines (strategies) message and channel selections, content, and use to address national emergencies or terrorism concerns based on feedback mechanisms; (4) ensures that ''lessons learned'' from evaluation of national emergency or terrorism concern communication efforts are fed back into strategies for subsequent communication campaigns, information releases, delivery, and other communication projects; (5) evaluates the reach and effectiveness of CDC communication activities and products for national emergency and terrorism concern communication efforts; (6) pursues or consults on the development, design, and dissemination of CDC communications campaigns, media buys, PSAs, and other CDC information related to national emergencies or terrorism concerns; (7) ensures that the content of CDC scientific communications is accessible (available, understandable, actionable) and disseminated to the public and target audience related national emergencies and terrorism concerns; (8) tailors science-based information related to national emergencies and terrorism concerns for key sector audiences using knowledge of the interests and level of scientific sophistication of those audiences; (9) ensures that CDC's face to the outside world (through communication campaigns, information releases, and other communication projects) during national emergencies or terrorism concern communication efforts is consistent with overall CDC brand/identity strategies as set by marketing unit; (10) manages the content during national emergencies or terrorism events on selected/major channels CDC uses to push national emergency and terrorism concern messages outward (*e.g.,* media, Emergency Communication System, Epi-x, distance learning, broadcast/ satellite capability, messaging through Health Alert Network) to include selection and promotion of content on selected channels, as well as evaluation of effectiveness in terms of customer use and comprehension of programs and information delivered via channel; (11) manages the content during national emergencies or terrorism events on selected/major channels the public uses to contact CDC (*e.g.,* Internet, phone hotlines, museum) to include selection and promotion of content on selected channels, as well as evaluation of effectiveness in terms of customer use and comprehension of programs and information delivered via channel; (12) systematically integrates a broad spectrum of information on the policy environment, public attitudes, and related public and private initiatives that relate to CDC efforts to improve health and safety understanding and actions related to national emergencies and terrorism concerns; (13) brings an integrated marketing perspective to data collection and CDC data resources, bringing data from various sources to develop a more complete picture of the public and its health concerns/interests, and to address national emergencies and terrorism; (14) provides for systematic mechanisms for gaining public input during national emergencies and terrorism concerns (*e.g.,* advisory mechanisms, focus groups, polling, legislative and media tracking), for getting customer feedback on CDC programs (Web site and 800 number feedback, user surveys, feedback from partners, media tracking), and for the systematic application of knowledge gained from such input into agency decision making; (15) sponsors/initiates original research related to national emergencies and terrorism concerns on: Customer needs and interest; CDC's brands/reputation/image/influence; needs and interests of key sectors and partners; audience segmentation; approaches to bundling and packaging of CDC offerings (information and products); methods for measuring effectiveness; health systems/services research; and, effectiveness of messages and channels; and (16) develops and manages content as well as facilitates use of a secure communication and data sharing network for federal, state and other selected public health officials.

Consumer Services Branch (CPBCD). (1) Identifies and implements strategies for delivery of CDC information to key communication channels to the public, and targeted audiences for maximum health impact; (2) identifies and pursues opportunities for communication-bundled CDC communication messages through appropriate, available channels; (3) monitors and refines channel selection, content, and use based on feedback mechanisms; (4) identifies ways to leverage existing dissemination channels for CDC information for use by other CDC units and projects; (5) implements and/or oversees the dissemination of communications campaigns, media buys, PSAs, and other CDC information through appropriate, available channels; (6) ensures that the content of CDC scientific communications is accessible (available, understandable, actionable) to the public and target audiences through appropriate, available channels; (7) ensures that dissemination of CDC's face

to the outside world (through communication campaigns, information releases, and other communication projects) is consistent with overall CDC brand/identity strategies as set by marketing unit in all appropriate, available channels; (8) manages selected/major channels CDC uses to push messages outward (e.g., media, distance learning and broadcast/satellite capability) to include selection and promotion of content on selected channels as well as, evaluation of effectiveness in terms of customer use and comprehension of programs and information delivered via channel; (9) manages, oversees, and evaluates the content on selected/major channels the public uses to contact CDC (e.g., Internet, phone hotlines, museum) to include selection and promotion of content as well as, evaluation of effectiveness in terms of customer use and comprehension of programs and information delivered via channel; (10) provides for systematic mechanisms for getting customer feedback on CDC programs (Web site and 800 number feedback, user surveys, and feedback from partners) and for the systematic application of knowledge gained from such input into agency decision-making; and (11) provides oversight for, and operation of, the CDC Visitor and Education Center and touring/visiting the CDC exhibit program.

Division of Public and Private Partnerships (CPBD). (1) Provides leadership in the development and coordination of high-priority partnerships, and sets strategies and goals for working with five sectors and partners (business and workers, health care, education, federal agencies, foundations, faith, and community organizations); (2) identifies critical cross-CDC relationships and devotes concerted, consistent, and high-level attention to these relationships in order to maximize CDC's success in achieving priority health goals; (3) develops protocols for partnership ''triage'' to ensure timely and effective coordination; (4) serves as the agency-level contact on major issues for major partners or priority target partners; (5) provides leadership in building strategic relationships with new partners and extending the range of existing partnerships; (6) develops and maintains a database for high-priority, cross-cutting relationships; (7) provides leadership in developing systematic mechanisms for gaining public and private sector input on health issues and priorities, and identifies and pursues opportunities for broadening the range of approaches used by programs (e.g., using multiple communications channels; pursuing policy or engineering approaches in addition to direct-to-customer strategies); (8) oversees and manages a repository of CDC and external health policy research on the effectiveness of programs and interventions for public and private sector audiences; (9) identifies critical cross-CDC relationships, and devotes concerted, consistent and high-level attention to them (through partner coordinators and portfolio managers) in order to maximize CDC's success in achieving goals; (10) provides leadership in identifying and implementing strategies for effective delivery of CDC information to key sector audiences; (11) provides tailored, science-based information for key sector audiences; (12) provides leadership in the development of new mechanisms for agency-level communications with specific sectors; and (13) provides leadership by sponsoring/initiating original research on health policy, health promotion, and disease prevention.

Office of the Director (CPBD1). (1) Assures sector management support in the selection, prioritization, and implementation of CDC goals; (2) manages, directs, and coordinates the research agenda and activities of the division; (3) maintains partnership coordination database; (4) develops strategy and planning, and provides leadership and guidance on strategic planning, policy, program, project priority planning and setting, program management, and operations; (5) identifies and prioritizes sectors; (6) establishes division goals, objectives, and priorities; (7) monitors progress in implementation of projects and achievement of objectives; (8) plans, allocates, and monitors resources; (9) provides management, administrative, and support services, and coordinates with the NCHM Office of the Director on program and administrative matters; (10) establishes and supports a subcommittee of the Center's Marketing Council which represents the various NCs and regularly reviews the activities of the division; (11) provides liaison with other CDC organizations, other governmental agencies, private organizations, and other outside groups; and (12) provides scientific leadership and guidance to the division to assure highest scientific quality and professional standards.

Division of Public Health Partnerships (CPBE). (1) Provides leadership in the development and coordination of high-priority partnerships and sets strategy and goals for working with the public health community, especially state and local health organizations, their regional and national affiliate organizations, and public health and clinical laboratories and their affiliate organizations; (2) identifies critical cross-CDC relationships and devotes concerted, consistent, and high-level attention to these relationships in order to maximize CDC's success in achieving priority health goals; (3) develops protocols for partnership ''triage'' to ensure timely and effective coordination; (4) serves as the agency-level contact on major issues for major partners or priority target partners; (5) provides leadership in building strategic relationships with new partners and extending the range of existing partnerships; (6) supports a database for high-priority, cross-cutting relationships; (7) provides leadership in developing systematic mechanisms for gaining public health sector input on health issues and priorities to identify and implement strategies for broadening the range of approaches used by CDC programs (e.g., using multiple communications channels; pursuing policy or engineering approaches in addition to direct-to-customer strategies; and working in collaboration with other CDC offices to provide tailored, science-based information for effective delivery of CDC's information to key sector audiences) and new mechanisms for agency level communications with specific sectors; (8) develops knowledge base and understanding relative to the workings of important sectors, agencies, or groups in order to understand how CDC can more effectively achieve health and safety impact through partners; (9) identifies critical cross-CDC relationships and devotes concerted, consistent and high-level attention to them (through partner coordinators and portfolio managers) in order to maximize CDC's success in achieving goals; (10) provides leadership by collaborating on original research on public health sector services and interventions; and (11) provides leadership in collaboration with other CDC offices in addressing gaps in the public health system through field services and technical assistance.

Office of the Director (CPBE1). (1) Assures sector management support in the selection, prioritization, and implementation of CDC goals; (2) identifies and prioritizes partnerships; (3) establishes and supports partnership coordination database; (4) monitors progress in implementation of projects and achievement of objectives; (5) provides liaison with other CDC organizations, other governmental agencies, private organizations, and other outside groups; (6) coordinates

with the NCHM Office of the Director on program, administrative, and informational matters; (7) develops strategy and planning, and provides leadership and guidance on strategic planning, policy, program management and operations, information technology, and project priority planning and setting; (8) establishes division goals, objective, and priorities and coordinates division activities with other components of CDC and partners external to CDC; (9) plans, allocates, and monitors resources; (10) manages, directs, and coordinates the research agenda and activities of the division; (11) provides scientific leadership and guidance to the division to assure highest scientific quality and professional standards; and (12) establishes and supports a governing council that represents the various NCs and regularly reviews the activities of the division.

Extramural Services Activity (CPBE12). (1) Performs administrative management, monitoring, and oversight functions for extramural programs and research activities of the division, and for the NCs who utilize the division's extramural mechanisms, which include cooperative agreements with national level public health organizations; (2) provides extramural expertise in the development, funding, and administration of grants, cooperative agreements, and contracts; (3) manages the peer review and other objective review panel processes as well as applications submitted under cross-cutting CDC umbrella cooperative agreements with Association of Schools of Public Health, Association of Teachers of Preventive Medicine, Association of American Medical Colleges, conference support grants; and all other division extramural mechanisms; (4) manages Oak Ridge Institute for Science and Education and other task order contracts, and all other procurements; and (5) conducts annual program planning activities and plans the award process cycle with the division, NCHM, and PGO staff.

Laboratory Practice Evaluation and Genomics Branch (CPBED). (1) Encourages the establishment and adoption of performance standards for laboratory practice; (2) develops, evaluates, and implements systems for measurement and assessment of laboratory quality; (3) facilitates and conducts research and demonstration to support the scientific development of performance standards, evaluation systems, and regulatory standards, and to assess the efficacy of established standards; (4) develops, promotes, implements, and evaluates intervention strategies to correct general performance deficiencies in health laboratory systems and workers; (5) provides a forum for exchange of general information about laboratory practice, research, and development activities to promote the coordination of federal, state, and clinical laboratory improvement efforts; (6) coordinates and conducts activities that provide technical and scientific support to the Centers for Medicare and Medicaid Services (CMS) in its evaluation, development, and revision of standards and guidelines; (7) monitors and evaluates current and emerging practices in genomics to improve quality and promote access to genetics testing; and (8) collaborates with other components of the division, NCHM, and other NCs of CDC in carrying out the above functions.

Laboratory Practice Standards Branch (CPBEE). (1) Encourages the establishment and adoption of mandatory and voluntary standards for laboratory practice; (2) assists the CMS in the implementation of the Clinical Laboratory Improvement Amendments (CLIA) of 1988; (3) coordinates and conducts standards development, validation, and review activities that provide support to CMS in its development and revision of the CLIA standards and guidelines; (4) provides technical assistance to CMS in its review of accreditation programs (deemed status) and proficiency testing provider programs; (5) provides technical assistance to CMS in responding to inquiries, review of guidelines for implementation, and general oversight, especially issues relating to testing complexity, personnel, quality control/quality assessment, and proficiency testing; (6) provides scientific support for issues relative to the development and implementation of cytology standards; (7) coordinates CDC efforts in dissemination of information about laboratory standards by providing materials, forums, briefings, and assistance to CDC and external organizations in the interpretation, understanding, and implementation of regulations; and (8) collaborates with other components of the division and with other NCs and offices of CDC in carrying out the above functions.

Laboratory Systems Development Branch (CPBEB). (1) Promotes the development of public health laboratory infrastructure and high level functionality, both nationally and internationally. Domestic efforts include: (2) improving access by state laboratories to information on their clinical laboratories (National Laboratory Database); (3) defining and promoting best practices (performance standards and Healthy People 2010 measures); (4) promoting the development of management and leadership skills among present and developing public health laboratory leaders (National Center for Public Health Laboratory Leadership); (5) improving the communication and collaboration between state public health and clinical laboratories; (6) researching the causes for failures to adopt voluntary laboratory practice guidelines, such as MMWR Recommendations and Reports; (7) providing consultation to state and larger local public health laboratories, which request advice concerning issues ranging from management to physical surroundings; (8) promoting, developing, and implementing training needs assessment methodology to establish priorities for training interventions; (9) developing and conducting training to facilitate the timely transfer of newly emerging laboratory technology and standards for laboratory practice; and, (10) providing technical assistance, consultation, and training for trainers to improve the capacity and capability of regional organizations and state health agencies to develop and maintain decentralized training networks for laboratory professionals. National efforts focus upon improving the performances of state and local public health laboratories and their integrated public health laboratory systems, which include clinical laboratories and other stakeholders such as epidemiologists. Similarly, international efforts strive to: (11) improve systems functions, with a particular focus on the development of quality assessment systems and the use of external quality assessment; (12) provide training and consultations concerning which laboratory equipment and reagents are most suited to infrastructure deprived settings; and (13) collaborate with other components of the division and with other NCs of CDC in carrying out the above functions.

State and Local Public Health Systems Branch (CPBEC). (1) Provides leadership within CDC, with national public health organizations, and with governmental public health agencies to promote and support effective national partnerships for health promotion and disease prevention; (2) advises CDC NCs on program activities that strengthen the nation's public health system through effective linkages with governmental public health agencies and national public health organizations; (3) manages cooperative agreements between CDC

and national public health organizations aimed at strengthening the nation's public health system; (4) promotes, develops, conducts, and evaluates public health systems research aimed at strengthening the public health system with particular emphasis on optimizing performance of governmental public health agencies; (5) monitors (e.g., supports the collection and management of governmental public health system information for use in program and research activities) and evaluates the nation's public health system with regard to emerging issues (e.g., through environmental scanning), system effectiveness, and progress on achieving CDC's and the nation's public health goals; (6) provides knowledge and science-based information critical to the effectiveness of the governmental public health systems to public health agencies (e.g., public health practice consultation and information for critical system components such as epidemiology, public health nursing, etc.); (7) conducts recruitment, selection, placement, and administrative oversight/supervision of CDC field staff in governmental public health agencies (e.g., the Career Epidemiology Field Officer Program, and the provision of support to the Senior Management Officials Project, a.k.a. the Portfolio Manager Project) for selected parts of the public health system (e.g., critical gaps); (8) provides strategic leadership across CDC NCs for alignment of a field services mission to CDC goals pertaining to public health promotion, as well as public health system preparedness to support a strong national public health system, while operations and administrative oversight will be done by categorical programs in a NC for most field staff details; (9) provides leadership in defining CDC field staff goals for intramural capacity building, as well as goals for CDC extramural support to agencies at the state and local level for the purpose of assuring an effective public health system; (10) provides discipline specific and/or public health systems science-based information to CDC field staff to enhance effectiveness; (11) maintains methods of information-sharing among CDC field staff for the purpose of promoting effectiveness and monitoring overall public health system capacity; (12) conducts needs assessments at state and local public health agencies to adequately define host public health system needs and establish evaluation criteria to measure effectiveness of field staff placements; and (13) establishes and maintains strong program linkages with the Office of Workforce and Career Development and the Office of the Chief of Public Health Practice to facilitate systems development.

Division of Scientific Communications (CPBG). (1) Develops, implements, and evaluates innovative methods for the communication of scientific information by NCHM and its domestic and international constituents; (2) develops and executes a collaborative scientific communications action plan to achieve CDC's health protection goals; (3) provides expert consultation to NCHM on development of effective scientific messages, materials, and methods to clearly an effectively communicate risks and prevention recommendations, including written, oral, and visual communication; (4) ensures effective external oversight, input, and peer-review of CDC's scientific communications products; (5) develops new publications, broadcasts, and other communication products and services to meet the needs of CDC and targeted scientific audiences; (6) conducts systematic reviews and establishes mechanisms for achieving consensus on the effectiveness of heath interventions; (7) develops evidence-based recommendations for the use of population-based health interventions; (8) conducts audience surveys and other evaluations; (9) serves as the NCHM liaison to the National Center for Public Health Informatics regarding the development, implementation, and evaluation of communication technologies intended for scientific audiences; (1) serves as the NCHM liaison to other scientific publications and networks; and (11) conducts training in scientific communications.

Office of the Director (CPBG1). (1) Manages, directs, and coordinates the research agenda and activities of the Division of Scientific Communications; (2) establishes division goals, objectives, and priorities; and (3) co-chairs Communications Subcommittee of National Center for Health Marketing Council.

Scientific Publications Branch (CPBGB). (1) Develops, plans, coordinates, edits, and produces the MMWR series, including the MMWR Recommendations and Reports, CDC Surveillance Summaries, and Annual Summary of Notifiable Diseases; (2) develops new publications, broadcasts and other communication products and services to meet the needs of CDC and target scientific audiences; and (3) produces and manages publications to advance the understanding and use of health marketing.

Division of Creative Services (CPBH). (1) Implements strategies for effective delivery of CDC information to key target audiences; (2) implements communications delivery of CDC information to key target audiences; (2) implements communications campaigns, media buys, PSA's and other CDC information and services that are high priority and/or cross-cutting; (3) implements campaigns that cut across multiple programs and coordinating centers; (4) provides CDC-wide services including umbrella contracting and other ''common carrier'' mechanisms to reach primary channels (e.g. broadcast and video production, message design), resources for development of materials and products (e.g. graphic arts and related services outlined in business services consolidation), and collects and/or facilitates distribution of graphic resources (e.g. to engineering design and expertise to support broadcast production); (5) develops new mechanism for agency-level communications with the public (e.g. DHHS TV, CDC TV, Radio/TV broadcasting, electronic newsletter, customized Internet site, push e-mail systems, etc.) to include selection and promote of content on selected channels, as well as evaluation of effectiveness in terms of customer use and comprehension of programs and information delivered via channel); (6) manages delivery mechanisms for outbound communications; and (7) develops new mechanisms to communicate with the public.

Office of the Director (CPBH1). (1) Manages, directs, and coordinates the research agenda and activities of the Division of Creative Services; (2) establishes division goals, objectives, and priorities; (3) runs daily operations of division including personnel, pay, travel, IT services management, and routine procurement; (4) sets up and implements tracking and triage system for managing incoming requests for creative services as well as tracking progress in accomplishing task objectives and overall division performance measures; (5) develops and implements performance management measures for division to include metric definition, reporting, analysis, and customer governance activities; (6) establishes and maintains quality assurance editing to ensure that service and product quality are consistent with outside industry for the highest possible agency impact and perception; (7) provides customer account management by providing a means of coordination and communication with clients, and those fulfilling client requests, at the branch level; and (8) manages project and information archives to facilitate

knowledge management and organizational efficiency.

Presentation Graphics and Multilingual Services Branch (CPBHC). (1) Supports agency-wide graphics, and language translation efforts through the use of state-of-the-art computer graphics and translation hardware and software; (2) develops and/or provides design and graphic elements for exhibits and presentations, desktop publishing, publications, editorial services, and multi-language translation services, and (3) processes DHHS clearances for all media and print-related products that are developed throughout the CDC which are to be distributed to audiences outside of CDC.

Broadcast Production and Distribution Branch (CPBHD). (1) Develops and/or provides agency-wide communication efforts through state of the art broadcast, television graphics, and video production channels; (2) supports the communication needs of the CDC's Director's Emergency Operations Centers (DEOC) to assure response capacity and capability for emergency broadcasts; (3) responsible for all CDC broadcast-grade video production requirements; (4) manages and provides leadership for the Public Health Training Network, which is a global distance learning network of partners providing access to public health distance learning; (5) in coordination with DHHS, develops and delivers programming for DHHS TV and assists in the development of the CDC global health network (CDC TV) to deliver timely and accurate information to improve health and safety for the U.S. public and around the world; (6) responsible for audio/video engineering design, installation, setup, and maintenance for the division. CDC Director's press rooms, and DEOCs as required; (7) provides in-house creation, duplication, and conversion of most video delivery formats, including VHS, S–VHS, DV–Cam, Mini–DV, D–HD, Betacam–SP, Digital-Betacam, HD (all formats) and international formats such as PAL, SECAM, SECAM–II and all future video formats; (8) provides audio-only production services including broadcast-grade in-house audio recording, video-sweetening, editing, voice-over talent, format-conversion, and delivery; and (9) provides professional consultation, training, and setup of multiple telecommunication systems including audio conference, videoconference, PBX, POTS (plain old telephone service) hybrid-integration, menu creation, design and operation.

Dated: September 23, 2005.

William H. Gimson,

Chief Operating Officer, Centers for Disease Control and Prevention (CDC).

[FR Doc. 05–20061 Filed 10–5–05; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Statement of Organization, Functions, and Delegations of Authority

Part C (Centers for Disease Control and Prevention) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772–76, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 70 FR 55859–55860, dated September 23, 2005) is amended to reflect the establishment of the Office of Strategy and Innovation within the Office of the Director, Centers for Disease Control and Prevention.

After the mission statement for the Office of Chief of Public Health Practice (CAR), insert the following:

Office of Strategy and Innovation (CAM). The Office of Strategy and Innovation (OSI) serves as the focal point for accelerating the health impact of CDC's work and advancing health equity within and beyond CDC's programs. In carrying out its mission, OSI: (1) Leads CDC's efforts to develop, measure and advance agency-wide health impact goals: (2) incorporates efforts to improve health equity in all CDC activities; (3) fosters strategic excellence and innovation across the agency; (4) provides superior decision support to CDC's executive leadership; and (5) leads organizational development and the transition process.

Office of the Director (CAM1). (1) Develops, monitors and advances agency-wide goals; (2) improves health equity; (3) assesses and leverages health needs, science, and available resources to accomplish agency-wide goals; (4) provides guidance, tools, and assistance to CDC programs in developing and refining strategies and indicators to measure program effectiveness and impact; (5) applies knowledge management tools and decision support systems in allocation of resources and improves agency decisionmaking; (6) communicates key messages to CDC employees and partners about CDC's direction, goals and priorities; (7) develops, monitors and advances agency-wide goals for improving health equity, fostering strategic excellence and innovation across CDC, and organizational development and the transition process; (8) works directly with the strategy and innovation officers within the coordinating centers to accomplish its activities and institutionalize organizational change, improvement and accountability; and (9) maintains ongoing communication with the strategy and innovation officers to actively participate in discussions of overall goals and strategies at the coordinating center level, and involves the strategy and innovation officers in the refinement of goals, measures, and identification and creation of new or enhanced high priority programmatic areas.

Office of Minority Health and Health Disparities (CAMB). The Office of Minority Health and Health Disparities (OMHD) aims to accelerate CDC's health impact in the U.S. population and to eliminate health disparities for vulnerable populations as defined by race/ethnicity, socio-economic status, geography, gender, age, disability status, risk status related to sex and gender, and among other populations identified to be at-risk for health disparities. To carry out its mission, OMHD: (1) Promotes minority health and eliminates racial and ethnic health disparities; (2) promotes health and the prevention of disease in Indian Country (*i.e.,* American Indian and Alaska Native communities, their sovereign governments and other institutions in the U.S.); (3) develops CDC-wide health disparities elimination strategies, policies, goals, and programs; (4) defines disparities and eliminates sub-goals for each health impact goal; (5) monitors and reports progress toward health disparities elimination goals; (6) evaluates the impact of policies and programs to achieve health disparities elimination; (7) manages health disparities elimination goals through scanning, analysis, knowledge management, decision-support systems, and reporting (Key Performance Indicators, Government Performance and Results Act, Program Assessment Rating Tool); (8) mobilizes resources and advocates for health disparities elimination programs; (9) aligns use of resources with accomplishment of health disparities elimination goals; (10) supports internal and external partnerships to advance the science, practice, and workforce for eliminating health disparities inside and outside CDC; (11) maintains critical linkages with federal partners including the Office of the Secretary, Department of

Health and Human Services, and represents CDC on related scientific and policy committees; (12) establishes external advisory capacity and internal advisory and action capacity; (13) coordinates CDC-wide minority health and health disparities elimination initiatives; (14) synthesizes, disseminates, and encourages use of scientific evidence regarding effective interventions to achieve health disparities elimination outcomes; (15) stimulates innovation in science and practice; and (16) provides decision support to the Executive Leadership Board in allocating CDC resources to agency-wide programs of surveillance, research, intervention, and evaluation.

Office of Women's Health (CAMG). The Office of Women's Health (OWH) aims to promote and improve the health, safety, and quality of life of women. As a leader for women's health issues at CDC, the Office of Women's Health: (1) Advises the CDC Director on matters relating to women's health research, programs and strategies; (2) promotes the health and well-being of women; (3) communicates health information, research findings, and prevention strategies to a diverse group of providers, consumers, and organizations; (4) advances sound scientific knowledge for public health action, promotes the role of prevention, and works to improve the understanding of women's health priorities; (5) fosters partnerships and collaborations within CDC and with other public and private organizations, agencies, institutions, and others to improve the health and safety of women; (6) publishes newsletters and other documents that highlight prevention programs, research findings, publications, health campaigns, health promotion strategies, and other information available at CDC; (7) leads CDC Women's Health Committee by facilitating and coordinating agency-wide efforts and enhancing channels for communication and cooperation; (8) supports the development of future women's health and public health professionals through various training and student positions within the office; (9) prepares agency reports, briefing documents, and other materials addressing women's health issues; (10) stimulates and supports prevention research, programs, and other activities through funding; (11) represents the agencies at meetings, committees, workgroups, conferences, and briefings; (12) serves as liaison for women's health between CDC and other agencies and organizations; (13) develops opportunities for, promotes, and supports the agency as a resource for women's health issues; and (14) provides assistance to state and local programs on women's health issues.

Dated: September 23, 2005.

William H. Gimson,

Chief Operating Officer, Centers for Disease Control and Prevention (CDC).

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

Privacy Act of 1974; Report of a New System of Records

AGENCY: Department of Health and Human Services (HHS), Centers for Medicare & Medicaid Services (CMS).

ACTION: Notice of a New System of Records (SOR).

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, we are proposing to establish a new system titled ''Medicare Physician Group Practice Demonstration (PGPD),'' System No. 09–70–0559. The PGPD tests a payment methodology for physician practices that combines Medicare fee-for-service payments with performance-based payments for improvements in patient management and quality of care. Improvements in these areas are expected to generate savings to the Medicare program to offset the costs of the performance payments. Mandated by Section 412 of the Benefits Improvement & Protection Act of 2000, the PGPD seeks to provide incentives for physicians to adopt care management strategies and to improve quality as defined by key measurable processes and outcomes.

The primary purpose of the system is to establish a pay-for-performance three year pilot with physicians to encourage the coordination of care, promote investment in administrative structure and process, and reward physicians for improving health care processes and outcomes. Information retrieved from this system will also be disclosed to: (1) Support regulatory, reimbursement, and policy functions performed within the agency or by a contractor or consultant; (2) assist another Federal or state agency with information to enable such agency to administer a Federal health benefits program, or to enable such agency to fulfill a requirement of Federal statute or regulation that implements a health benefits program funded in whole or in part with Federal funds; (3) assist an individual or organization for a research project or in support of an evaluation project related to the prevention of disease or disability, the restoration or maintenance of health, or payment related projects; (4) support constituent requests made to a congressional representative; (5) support litigation involving the agency; and (6) combat fraud and abuse in certain health benefits programs. We have provided background information about the new system in the ''Supplementary Information'' section below. Although the Privacy Act requires only that CMS provide an opportunity for interested persons to comment on the proposed routine uses, CMS invites comments on all portions of this notice. See **EFFECTIVE DATES** section for comment period.

EFFECTIVE DATES: CMS filed a new system report with the Chair of the House Committee on Government Reform and Oversight, the Chair of the Senate Committee on Governmental Affairs, and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on September 27, 2005. In any event, we will not disclose any information under a routine use until 40 days after publication. We may defer implementation of this system or one or more of the routine use statements listed below if we receive comments that persuade us to defer implementation.

ADDRESSES: The public should address comments to: CMS Privacy Officer, Division of Privacy Compliance Data Development, CMS, Mail Stop N2–04–27, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. Comments received will be available for review at this location, by appointment, during regular business hours, Monday through Friday from 9 a.m.–3 p.m., eastern time zone.

FOR FURTHER INFORMATION CONTACT: John Pilotte, Research Analyst, Division of Payment Policy, Medicare Demonstration Programs Group, Office of Research Development and Information, CMS, Mail Stop C4–17–27, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. The telephone number is (410) 786–6558 or e-mail *john.pilotte@cms.hhs.gov.*

SUPPLEMENTARY INFORMATION: The PGPD rewards physicians for improving the quality and efficiency of health care services delivered to Medicare fee-for-service beneficiaries. Mandated by Section 412 of the Benefits Improvement and Protection Act of 2000, the PGPD seeks to: (1) Encourage coordination of Part A and Part B services, (2) promote efficiency through investment in administrative structure

and process, and (3) reward physicians for improving health outcomes.

During the three-year project, CMS will reward physician groups that improve patient outcomes by coordinating care for chronically ill and high cost beneficiaries in an efficient manner. The Demonstration enables CMS the ability to test physician groups' responses to financial incentives for improving care coordination, delivery processes and patient outcomes, and the effect on access, cost, and quality of care to Medicare beneficiaries.

Physician groups participating in the demonstration will continue to be paid on a fee-for-service basis. Physician groups will implement care management strategies designed to anticipate patient needs, prevent chronic disease complications and avoidable hospitalizations, and improve quality of care.

Performance payments will be derived from savings expected through improvements in care coordination for an assigned beneficiary population. Performance payments will be allocated between efficiency and quality, with an increasing emphasis placed on quality during the demonstration. The demonstration will use a total of 32 measures that focus on common chronic illnesses and preventive services for measuring and rewarding quality.

CMS selected ten physician groups on a competitive basis to participate in the demonstration. The groups were selected based on a variety of factors including technical review panel findings, organizational structure, operational feasibility, geographic location, and demonstration implementation strategy.

I. Description of the New System of Records

A. Statutory and Regulatory Basis for System

The statutory authority for this system is given under the provisions of Section 412 of the Benefits Improvement & Protection Act of 2000.

B. Collection and Maintenance of Data in the System

This system will maintain individually identifiable data collected on the Medicare expenditures of beneficiaries assigned to the participating physician practices. In addition, data will be collected from the physician practices on their performance based on a series of quality measures. The collected information will include: provider name, unique provider identification number, clinic name, medical record number, health insurance claim number, first name, last name, gender type, birth date, as well as, background information relating to Medicare or Medicaid issues.

II. Agency Policies, Procedures, and Restrictions on the Routine Use

The Privacy Act permits us to disclose information without an individual's consent if the information is to be used for a purpose that is compatible with the purpose(s) for which the information was collected. Any such disclosure of data is known as a ''routine use.'' The government will only release PGPD information that can be associated with an individual as provided for under ''Section III. Proposed Routine Use Disclosures of Data in the System.'' Both identifiable and non-identifiable data may be disclosed under a routine use.

We will only collect the minimum personal data necessary to achieve the purpose of the PGPD. CMS has the following policies and procedures concerning disclosures of information that will be maintained in the system. Disclosure of information from the system will be approved only to the extent necessary to accomplish the purpose of the disclosure and only after CMS:

1. Determines that the use or disclosure is consistent with the reason that the data is being collected, *e.g.*, to collect and maintain data on the Medicare expenditures of the beneficiaries assigned to participating physician practices and making performance payments to participating physician practices.

2. Determines that:

a. The purpose for which the disclosure is to be made can only be accomplished if the record is provided in individually identifiable form;

b. The purpose for which the disclosure is to be made is of sufficient importance to warrant the effect and/or risk on the privacy of the individual that additional exposure of the record might bring; and

c. There is a strong probability that the proposed use of the data would in fact accomplish the stated purpose(s).

3. Requires the information recipient to:

a. Establish administrative, technical, and physical safeguards to prevent unauthorized use of disclosure of the record;

b. Remove or destroy at the earliest time all patient-identifiable information; and

c. Agree to not use or disclose the information for any purpose other than the stated purpose under which the information was disclosed.

4. Determines that the data are valid and reliable.

III. Proposed Routine Use Disclosures of Data in the System

A. Entities Who May Receive Disclosures Under Routine Use

The Privacy Act allows us to disclose information without an individual's consent if the information is to be used for a purpose that is compatible with the purpose(s) for which the information was collected. Any such compatible use of data is known as a ''routine use.'' The proposed routine uses in this system meet the compatibility requirement of the Privacy Act. We are proposing to establish the following routine use disclosures of information maintained in the system:

1. To agency contractors or consultants who have been engaged by the agency to assist in the performance of a service related to this system of records and who need to have access to the records in order to perform the activity.

We contemplate disclosing information under this routine use only in situations in which CMS may enter into a contractual or similar agreement with a third party to assist in accomplishing CMS function relating to purposes for this system or records.

CMS occasionally contracts out certain of its functions when doing so would contribute to effective and efficient operations. CMS must be able to give a contractor or consultant whatever information is necessary for the contractor or consultant to fulfill its duties. In these situations, safeguards are provided in the contract prohibiting the contractor or consultant from using or disclosing the information for any purpose other than that described in the contract and requires the contractor or consultant to return or destroy all information at the completion of the contract.

2. To another Federal or state agency to:

a. Contribute to the accuracy of CMS's proper payment of Medicare benefits,

b. Enable such agency to administer a Federal health benefits program, or as necessary to enable such agency to fulfill a requirement of a Federal statute or regulation that implements a health benefits program funded in whole or in part with Federal funds, and/or

c. Assist Federal/state Medicaid programs within the state.

Other Federal or state agencies in their administration of a Federal health program may require PGPD information in order to support evaluations and monitoring of Medicare claims

information of beneficiaries, including proper reimbursement for services provided.

3. To an individual or organization for a research project or in support of an evaluation project related to the prevention of disease or disability, the restoration or maintenance of health, or payment related projects.

The PGPD data will provide for research or in support of evaluation projects, a broader, longitudinal, national perspective of the status of Medicare beneficiaries. CMS anticipates that many researchers will have legitimate requests to use these data in projects that could ultimately improve the care provided to Medicare beneficiaries and the policy that governs the care.

4. To a member of congress or to a congressional staff member in response to an inquiry of the congressional office made at the written request of the constituent about whom the record is maintained.

Beneficiaries sometimes request the help of a member of congress in resolving an issue relating to a matter before CMS. The member of congress then writes CMS, and CMS must be able to give sufficient information to be responsive to the inquiry.

5. To the Department of Justice (DOJ), court or adjudicatory body when:

a. The agency or any component thereof, or

b. Any employee of the agency in his or her official capacity, or

c. Any employee of the agency in his or her individual capacity where the DOJ has agreed to represent the employee, or

d. the United States Government is a party to litigation or has an interest in such litigation, and by careful review, CMS determines that the records are both relevant and necessary to the litigation and that the use of such records by the DOJ, court or adjudicatory body incompatible with the purpose for which the agency collected the records.

Whenever CMS is involved in litigation, and occasionally when another party is involved in litigation and CMS' policies or operations could be affected by the outcome of the litigation, CMS would be able to disclose information to the DOJ, court or adjudicatory body involved.

6. To a CMS contractor (including, but not necessarily limited to fiscal intermediaries and carriers) that assists in the administration of a CMS-administered health benefits program, or to a grantee of a CMS-administered grant program, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud or abuse in such program.

We contemplate disclosing information under this routine use only in situations in which CMS may enter into a contractual relationship or grant with a third party to assist in accomplishing CMS functions relating to the purpose of combating fraud and abuse.

CMS occasionally contracts out certain of its functions and makes grants when doing so would contribute to effective and efficient operations. CMS must be able to give a contractor or grantee whatever information is necessary for the contractor or grantee to fulfill its duties. In these situations, safeguards are provided in the contract prohibiting the contractor or grantee from using or disclosing the information for any purpose other than that described in the contract and requiring the contractor or grantee to return or destroy all information.

7. To another Federal agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States (including any State or local governmental agency), that administers, or that has the authority to investigate potential fraud or abuse in, a health benefits program funded in whole or in part by Federal funds, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud or abuse in such programs.

Other agencies may require PGPD information for the purpose of combating fraud and abuse in such Federally-funded programs.

B. Additional Provisions Affecting Routine Use Disclosures

This system contains Protected Health Information (PHI) as defined by HHS regulation ''Standards for Privacy of Individually Identifiable Health Information'' (45 CFR Parts 160 and 164, 65 FR 82462 (12–28–00), Subparts A and E. Disclosures of PHI authorized by these routine uses may only be made if, and as, permitted or required by the ''Standards for Privacy of Individually Identifiable Health Information.''

In addition, our policy will be to prohibit release even of not directly identifiable information, except pursuant to one of the routine uses or if required by law, if we determine there is a possibility that an individual can be identified through implicit deduction based on small cell sizes (instances where the patient population is so small that individuals who are familiar with the enrollees could, because of the small size, use this information to deduce the identity of the beneficiary).

IV. Safeguards

CMS has safeguards in place for authorized users and monitors such users to ensure against excessive or unauthorized use. Personnel having access to the system have been trained in the Privacy Act and information security requirements. Employees who maintain records in this system are instructed not to release data until the intended recipient agrees to implement appropriate management, operational and technical safeguards sufficient to protect the confidentiality, integrity and availability of the information and information systems and to prevent unauthorized access.

This system will conform to all applicable Federal laws and regulations and Federal, HHS, and CMS policies and standards as they relate to information security and data privacy. These laws and regulations include but are not limited to: the Privacy Act of 1974; the Federal Information Security Management Act of 2002; the Computer Fraud and Abuse Act of 1986; the Health Insurance Portability and Accountability Act of 1996; the E-Government Act of 2002, the Clinger-Cohen Act of 1996; the Medicare Modernization Act of 2003, and the corresponding implementing regulations. OMB Circular A–130, Management of Federal Resources, Appendix III, Security of Federal Automated Information Resources also applies. Federal, HHS, and CMS policies and standards include, but are not limited to, all pertinent National Institute of Standards and Technology publications, the HHS Information Systems Program Handbook, and the CMS Information Security Handbook.

V. Effects of the New System on Individual Rights

CMS proposes to establish this system in accordance with the principles and requirements of the Privacy Act and will collect, use, and disseminate information only as prescribed therein. Data in this system will be subject to the authorized releases in accordance with the routine uses identified in this system of records.

CMS will take precautionary measures (see item IV. above) to minimize the risks of unauthorized access to the records and the potential harm to individual privacy or other personal or property rights of patients whose data is maintained in the system.

CMS will collect only that information necessary to perform the system's functions. In addition, CMS will make disclosure from the proposed system only with consent of the subject individual, or his/her legal representative, or in accordance with an applicable exception provision of the Privacy Act.

CMS, therefore, does not anticipate an unfavorable effect on individual privacy as a result of maintaining this system of records.

Dated: September 27, 2005.

Charlene Brown,

Acting Chief Operating Officer, Centers for Medicare & Medicaid Services.

System No.: 09–70–0559.

SYSTEM NAME:

''Medicare Physician Group Practice Demonstration (PGPD)'' HHS/CMS/ORDI.

SECURITY CLASSIFICATION:

Level 3 Privacy Act Sensitive.

SYSTEM LOCATION:

CMS Data Center, 7500 Security Boulevard, North Building, First Floor, Baltimore, Maryland 21244–1850 and CMS contractors and agents at various locations.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system will maintain individually identifiable data collected on the Medicare expenditures and quality of care of beneficiaries assigned to the participating physician practices.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system will maintain individually identifiable data collected on the Medicare expenditures of beneficiaries assigned to the participating physician practices. In addition, data will be collected from the physician practices on their performance based on a series of quality measures. The collected information will include: provider name, unique provider identification number, clinic name, medical record number, health insurance claim number (HICN), first name, last name, gender type, birth date, as well as, background information relating to Medicare or Medicaid issues.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The statutory authority for this system is given under the provisions of Section 412 of the Benefits Improvement & Protection Act of 2000.

PURPOSE(S) OF THE SYSTEM:

The primary purpose of the system is to establish a pay-for-performance three year pilot with physicians to encourage the coordination of care, promote investment in administrative structure and process, and reward physicians for improving health care processes and outcomes. Information retrieved from this system will also be disclosed to: (1) Support regulatory, reimbursement, and policy functions performed within the agency or by a contractor or consultant; (2) assist another Federal or state agency with information to enable such agency to administer a Federal health benefits program, or to enable such agency to fulfill a requirement of Federal statute or regulation that implements a health benefits program funded in whole or in part with Federal funds; (3) assist an individual or organization for a research project or in support of an evaluation project related to the prevention of disease or disability, the restoration or maintenance of health, or payment related projects; (4) support constituent requests made to a congressional representative; (5) support litigation involving the agency; and (6) combat fraud and abuse in certain health benefits programs.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

A. Entities Who May Receive Disclosures Under Routine Use

The Privacy Act allows us to disclose information without an individual's consent if the information is to be used for a purpose that is compatible with the purpose(s) for which the information was collected. Any such compatible use of data is known as a ''routine use.'' The proposed routine uses in this system meet the compatibility requirement of the Privacy Act. We are proposing to establish the following routine use disclosures of information maintained in the system:

1. To agency contractors or consultants who have been engaged by the agency to assist in the performance of a service related to this system and who need to have access to the records in order to perform the activity.

2. To another Federal or state agency to:

a. Contribute to the accuracy of CMS's proper payment of Medicare benefits,

b. Enable such agency to administer a Federal health benefits program, or as necessary to enable such agency to fulfill a requirement of a Federal statute or regulation that implements a health benefits program funded in whole or in part with Federal funds, and/or

c. Assist Federal/state Medicaid programs within the state.

3. To an individual or organization for a research project or in support of an evaluation project related to the prevention of disease or disability, the restoration or maintenance of health, or payment related projects.

4. To a member of Congress or to a congressional staff member in response to an inquiry of the congressional office made at the written request of the constituent about whom the record is maintained.

5. To the Department of Justice (DOJ), court or adjudicatory body when:

a. The agency or any component thereof, or

b. Any employee of the agency in his or her official capacity, or

c. Any employee of the agency in his or her individual capacity where the DOJ has agreed to represent the employee, or

d. The United States Government

is a party to litigation or has an interest in such litigation, and by careful review, CMS determines that the records are both relevant and necessary to the litigation and that the use of such records by the DOJ, court or adjudicatory body is incompatible with the purpose for which the agency collected the records.

6. To a CMS contractor (including, but not necessarily limited to fiscal intermediaries and carriers) that assists in the administration of a CMS-administered health benefits program, or to a grantee of a CMS-administered grant program, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud or abuse in such program.

7. To another Federal agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States (including any State or local governmental agency), that administers, or that has the authority to investigate potential fraud or abuse in, a health benefits program funded in whole or in part by Federal funds, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud or abuse in such programs.

B. Additional Provisions Affecting Routine Use Disclosures

This system contains Protected Health Information (PHI) as defined by HHS regulation ''Standards for Privacy of Individually Identifiable Health Information'' (45 Code of Federal Regulations (CFR)) Parts 160 and 164, 65 Fed. Reg. 82462 (12–28–00), Subparts A and E. Disclosures of PHI authorized

by these routine uses may only be made if, and as, permitted or required by the ''Standards for Privacy of Individually Identifiable Health Information.''

In addition, our policy will be to prohibit release even if not directly identifiable, except pursuant to one of the routine uses or if required by law, if we determine there is a possibility that an individual can be identified through implicit deduction based on small cell sizes (instances where the patient population is so small that individuals who are familiar with the enrollees could, because of the small size, use this information to deduce the identity of the beneficiary).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

All records are stored on magnetic media.

RETRIEVABILITY:

Information collected will be retrieved by the name or other identifying information of the participating provider, and may also be retrievable by HICN at the individual beneficiary record level.

SAFEGUARDS:

CMS has safeguards in place for authorized users and monitors such users to ensure against excessive or unauthorized use. Personnel having access to the system have been trained in the Privacy Act and information security requirements. Employees who maintain records in this system are instructed not to release data until the intended recipient agrees to implement appropriate management, operational and technical safeguards sufficient to protect the confidentiality, integrity and availability of the information and information systems and to prevent unauthorized access.

This system will conform to all applicable Federal laws and regulations and Federal, HHS, and CMS policies and standards as they relate to information security and data privacy. These laws and regulations include but are not limited to: the Privacy Act of 1974; the Federal Information Security Management Act of 2002; the Computer Fraud and Abuse Act of 1986; the Health Insurance Portability and Accountability Act of 1996; the E-Government Act of 2002, the Clinger-Cohen Act of 1996; the Medicare Modernization Act of 2003, and the corresponding implementing regulations. OMB Circular A–130, Management of Federal Resources, Appendix III, Security of Federal Automated Information Resources also applies. Federal, HHS, and CMS policies and standards include, but are not limited to, all pertinent National Institute of Standards and Technology publications, the HHS Information Systems Program Handbook, and the CMS Information Security Handbook.

RETENTION AND DISPOSAL:

CMS will retain identifiable information maintained in the PGPD system of records for a period of 6 years. Data residing with the designated claims payment contractor shall be returned to CMS at the end of the project, with all data then being the responsibility of CMS for adequate storage and security. All claims-related records are encompassed by the document preservation order and will be retained until notification is received from the DOJ.

SYSTEM MANAGER AND ADDRESS:

Director, Medicare Demonstration Programs Group, CMS, 7500 Security Boulevard, Mail stop C4–17–27, Baltimore, Maryland, 21244–1850.

NOTIFICATION PROCEDURE:

For purpose of access, the subject individual should write to the system manager who will require the system name, and for verification purposes, the subject individual's name, provider identification number, and the patient's Medicare number.

RECORD ACCESS PROCEDURE:

For purpose of access, use the same procedures outlined in Notification Procedures above. Requestors should also reasonably specify the record contents being sought. (These procedures are in accordance with Department regulation 45 CFR 5b.5 (a)(2)).

CONTESTING RECORD PROCEDURES:

The subject individual should contact the system manager named above, and reasonably identify the record and specify the information to be contested. State the corrective action sought and the reasons for the correction with supporting justification. (These procedures are in accordance with Department regulation 45 CFR 5b.7).

RECORD SOURCE CATEGORIES:

Information maintained in this system will be collected from physicians voluntarily participating through claims data requesting payment for services. The PGPD information will also be collected from the reporting of ambulatory care data by participating physician groups.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 05–19904 Filed 10–5–05; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

Privacy Act of 1974; Report of New System of Records

AGENCY: Department of Health and Human Services (HHS), Centers for Medicare & Medicaid Services (CMS).

ACTION: Notice of a new system of records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, CMS is proposing to establish a new system of records (SOR) titled ''Medicare Drug Data Processing System (DDPS),'' System No. 09–70–0553. On December 8, 2003, Congress passed the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) (Public Law (Pub. L.) 108–173). MMA amends the Social Security Act (the Act) by adding the Medicare Part D Program under Title XVIII and mandate that CMS establish a voluntary Medicare prescription drug benefit program effective January 1, 2006. Under the new Medicare Part D benefit, the Act allows Medicare payment to plans that contract with CMS to provide qualified Part D prescription drug coverage as described in 42 Code of Federal Regulations (CFR) § 423.401. As a condition of payment, all Part D plans must submit data and information necessary for CMS to carry out payment provisions (§ 1860D–15(c)(1)(C) and (d)(2) of the Act, and 42 CFR 423.322).

The primary purpose of this system is to collect, maintain, and process information on all Medicare covered and non-covered drug events, including non-Medicare drug events, for Medicare beneficiaries participating in the Part D voluntary prescription drug coverage under the Medicare program. The system will process drug event transactions and other drug events as necessary for CMS to help determine appropriate payment of covered drugs. The DDPS will consist of the transaction validation processing, storing and maintaining the drug event data in a large-scale database, and staging the data into data marts to support beneficiary and plan analysis of incurred payment. Information in this system will also be disclosed to: (1)

Support regulatory, reimbursement, and policy functions performed within the agency or by a contractor or consultant; (2) assist Quality Improvement Organizations; (3) assist Part D prescription drug plans; (4) support an individual or organization for a research, evaluation or epidemiological project; (5) support constituent requests made to a congressional representative; (6) support litigation involving the agency; and (7) combat fraud and abuse in certain health benefits programs. We have provided background information about the new system in the ''Supplementary Information'' section below. Although the Privacy Act requires only that CMS provide an opportunity for interested persons to comment on the proposed routine uses, CMS invites comments on all portions of this notice. See ''Effective Dates'' section for comment period.

EFFECTIVE DATES: CMS filed a new system report with the Chair of the House Committee on Government Reform and Oversight, the Chair of the Senate Committee on Governmental Affairs, and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on September 28, 2005. To ensure that all parties have adequate time in which to comment, the new system will become effective 30 days from the publication of the notice, or from the date it was submitted to OMB and the Congress, whichever is later, unless CMS receives comments that require alterations to this notice.

ADDRESSES: The public should address comments to the CMS Privacy Officer, Division of Privacy Compliance Data Development, CMS, Room N2–04–27, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. Comments received will be available for review at this location, by appointment, during regular business hours, Monday through Friday from 9 a.m.–3 p.m., eastern daylight time.

FOR FURTHER INFORMATION CONTACT: Harvey Hull, Health Insurance Specialist Division of Program Analysis and Performance, Medicare Drug Benefit Group, Centers for Beneficiary Choices, CMS, Room C1–25–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. The telephone number is 410–786–4036 or contact *harvey.hull@cms.hhs.gov.*

SUPPLEMENTARY INFORMATION: In December 2003, Congress passed the Medicare Prescription Drug, Improvement, and Modernization Act, amending the Act by adding Part D under Title XVIII. Under the new Medicare benefit, the Act allows Medicare payment to plans that contract with CMS to provide qualified Part D prescription drug coverage as described in 42 CFR 423.401. For simplicity, we use the term ''plans'' to refer to these entities that provide Part D prescription drug benefits and that must submit claims data to CMS for payment calculations. The Act provides four summary mechanisms for paying plans: 1. Direct subsidies; 2. premium and cost-sharing subsidies for qualifying low-income individuals (low-income subsidy); 3. federal reinsurance subsidies; and 4. risk-sharing.

As a condition of payment, all Part D plans must submit data and information necessary for CMS to carry out payment provisions (§ 1860D–15(c) (1) (C) and (d) (2) of the Act, and 42 CFR § 423.322). This document describes how CMS will implement the statutory payment mechanisms by collecting a limited subset of data elements on 100 percent of prescription drug ''claims'' or events. Much of the data, especially dollar fields, will be used primarily for payment. However, some of the other data elements such as pharmacy and prescriber identifiers will be used for validation of the claims as well as for other legislated functions such as quality monitoring, program integrity, and oversight. In addition, we note that this paper only covers data collected on claims and does not cover data CMS may collect from plans through other mechanisms, for example monitoring plan formularies and beneficiary appeals.

Every time a beneficiary fills a prescription covered under Part D, plans must submit a summary record called the prescription drug event (PDE) record to CMS. The PDE record contains prescription drug cost and payment data that will enable CMS to make payment to plans and otherwise administer the Part D benefit. Specifically, the PDE record will include covered drug costs above and below the out-of-pocket threshold; distinguish enhanced alternative costs from the costs of drugs provided under the standard benefit; and will record payments made by Part D plan sponsors, other payers, and by or on behalf of beneficiaries. Plans must also identify costs that contribute towards a beneficiary's true-out-of-pocket or TrOOP limit, separated into three categories: low-income cost-sharing subsidy amounts paid by the plan at the point of sale (POS), beneficiary payments, and all TrOOP-eligible payments made by qualified entities on behalf of a beneficiary. Much of the data, especially dollar fields, will be used primarily for payment. However, some of the other data elements such as pharmacy and prescriber identifiers will be used for validation of the claims as well as for other legislated functions such as quality monitoring, program integrity, and oversight.

I. Description of the Proposed System of Records

A. Statutory and Regulatory Basis for System

Authority for maintenance of this system is given under provisions of the Medicare Prescription Drug, Improvement, and Modernization Act, amending the Social Security Act (the Act) by adding Part D under Title XVIII (§ 1860D–15(c)(1)(C) and (d)(2), as described in 42 Code of Federal Regulation (CFR) 423.401.

B. Collection and Maintenance of Data in the System

The system contains summary prescription drug claim information on all Medicare covered and non-covered drug events, including non-Medicare drug events, for Medicare beneficiaries of the Medicare program. This system contains summary prescription drug claim data, health insurance claim number, card holder identification number, date of service, gender, and optionally, the date of birth. The system contains provider characteristics, prescriber identification number, assigned provider number (facility, referring/servicing physician), and national drug code, total charges, Medicare payment amount, and beneficiary's liability.

II. Agency Policies, Procedures, and Restrictions on the Routine Use

A. The Privacy Act permits us to disclose information without an individual's consent if the information is to be used for a purpose that is compatible with the purpose(s) for which the information was collected. Any such disclosure of data is known as a ''routine use.'' The government will only release DDPS information that can be associated with an individual as provided for under ''Section III. Proposed Routine Use Disclosures of Data in the System.'' Both identifiable and non-identifiable data may be disclosed under a routine use.

We will only disclose the minimum personal data necessary to achieve the purpose of DDPS. CMS has the following policies and procedures concerning disclosures of information that will be maintained in the system. In general, disclosure of information from the system will be approved only for the minimum information necessary

to accomplish the purpose of the disclosure and only after CMS:

1. Determines that the use or disclosure is consistent with the reason that the data is being collected, *e.g.*, to assist in a variety of health care initiatives with other entities related to the evaluation and study of the operation and effectiveness of the Medicare program.

2. Determines that:

a. The purpose for which the disclosure is to be made can only be accomplished if the record is provided in individually identifiable form;

b. The purpose for which the disclosure is to be made is of sufficient importance to warrant the effect and/or risk on the privacy of the individual that additional exposure of the record might bring; and

c. There is a strong probability that the proposed use of the data would in fact accomplish the stated purpose(s).

3. Requires the information recipient to:

a. Establish administrative, technical, and physical safeguards to prevent unauthorized use of disclosure of the record;

b. Remove or destroy at the earliest time all individually-identifiable information; and

c. Agree to not use or disclose the information for any purpose other than the stated purpose under which the information was disclosed.

4. Determines that the data are valid and reliable.

III. Proposed Routine Use Disclosures of Data in the System

A. Entities Who May Receive Disclosures Under Routine Use

These routine uses specify circumstances, in addition to those provided by statute in the Privacy Act of 1974, under which CMS may release information from the DDPS without the consent of the individual to whom such information pertains. Each proposed disclosure of information under these routine uses will be evaluated to ensure that the disclosure is legally permissible, including but not limited to ensuring that the purpose of the disclosure is compatible with the purpose for which the information was collected. We propose to establish or modify the following routine use disclosures of information maintained in the system:

1. To Agency contractors or consultants who have been contracted by the Agency to assist in accomplishment of a CMS function relating to the purposes for this system and who need to have access to the records in order to assist CMS.

We contemplate disclosing information under this routine use only in situations in which CMS may enter into a contractual or similar agreement with a third party to assist in accomplishing a CMS function relating to purposes for this system.

CMS occasionally contracts out certain of its functions when doing so would contribute to effective and efficient operations. CMS must be able to give a contractor or consultant whatever information is necessary for the contractor or consultant to fulfill its duties. In these situations, safeguards are provided in the contract prohibiting the contractor or consultant from using or disclosing the information for any purpose other than that described in the contract and requires the contractor or consultant to return or destroy all information at the completion of the contract.

2. To Quality Improvement Organization (QIO) in connection with review of claims, or in connection with studies or other review activities conducted pursuant to Part B of Title XI of the Act and in performing affirmative outreach activities to individuals for the purpose of establishing and maintaining their entitlement to Medicare benefits or health insurance plans.

QIOs will work to implement quality improvement programs, provide consultation to CMS, its contractors, and to state agencies. QIOs will assist the state agencies in related monitoring and enforcement efforts, assist CMS and intermediaries in program integrity assessment, and prepare summary information for release to CMS.

3. To Part D Prescription Drug Plans and their Prescription Drug Event submitters, providing protection against medical expenses of their enrollees without the beneficiary's authorization, and having knowledge of the occurrence of any event affecting (a) an individual's right to any such benefit or payment, or (b) the initial right to any such benefit or payment, for the purpose of coordination of benefits with the Medicare program and implementation of the Medicare Secondary Payer provision at 42 U.S.C. 1395y (b). Information to be disclosed shall be limited to Medicare utilization data necessary to perform that specific function. In order to receive the information, they must agree to:

a. Certify that the individual about whom the information is being provided is one of its insured or employees, or is insured and/or employed by another entity for whom they serve as a Third Party Administrator;

b. Utilize the information solely for the purpose of processing the individual's insurance claims; and

c. Safeguard the confidentiality of the data and prevent unauthorized access.

Other insurers may require DDPS information in order to support evaluations and monitoring of Medicare claims information of beneficiaries, including proper reimbursement for services provided.

4. To an individual or organization for a research, evaluation, or epidemiological project related to the prevention of disease or disability, the restoration or maintenance of health, or payment-related projects.

DDPS data will provide for research, evaluation, and epidemiological projects, a broader, longitudinal, national perspective of the status of Medicare beneficiaries. CMS anticipates that many researchers will have legitimate requests to use these data in projects that could ultimately improve the care provided to Medicare beneficiaries and the policy that governs the care.

5. To a Member of Congress or congressional staff member in response to an inquiry of the congressional office made at the written request of the constituent about whom the record is maintained.

Beneficiaries often request the help of a Member of Congress in resolving an issue relating to a matter before CMS. The Member of Congress then writes CMS, and CMS must be able to give sufficient information to be responsive to the inquiry.

6. To the Department of Justice (DOJ), court, or adjudicatory body when:

a. The Agency or any component thereof, or

b. Any employee of the Agency in his or her official capacity, or

c. Any employee of the Agency in his or her individual capacity where the DOJ has agreed to represent the employee, or

d. The United States Government, is a party to litigation or has an interest in such litigation, and by careful review, CMS determines that the records are both relevant and necessary to the litigation.

Whenever CMS is involved in litigation, or occasionally when another party is involved in litigation and CMS's policies or operations could be affected by the outcome of the litigation, CMS would be able to disclose information to the DOJ, court, or adjudicatory body involved.

7. To a CMS contractor (including, but not limited to fiscal intermediaries and carriers) that assists in the administration of a CMS-administered

health benefits program, or to a grantee of a CMS-administered grant program, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud or abuse in such program.

We contemplate disclosing information under this routine use only in situations in which CMS may enter into a contract or grant with a third party to assist in accomplishing CMS functions relating to the purpose of combating fraud and abuse.

CMS occasionally contracts out certain of its functions when doing so would contribute to effective and efficient operations. CMS must be able to give a contractor or grantee whatever information is necessary for the contractor or grantee to fulfill its duties. In these situations, safeguards are provided in the contract prohibiting the contractor or grantee from using or disclosing the information for any purpose other than that described in the contract and requiring the contractor or grantee to return or destroy all information.

8. To another Federal agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States (including any state or local governmental agency), that administers, or that has the authority to investigate potential fraud or abuse in, a health benefits program funded in whole or in part by Federal funds, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud or abuse in such programs.

Other agencies may require DDPS information for the purpose of combating fraud and abuse in such Federally funded programs.

B. Additional Circumstances Affecting Routine Use Disclosures

This system contains Protected Health Information as defined by HHS regulation ''Standards for Privacy of Individually Identifiable Health Information'' (45 CFR Parts 160 and 164, 65 FR 82462 (Dec. 28, 00), as amended by 66 FR 12434 (Feb. 26, 01)). Disclosures of Protected Health Information authorized by these routine uses may only be made if, and as, permitted or required by the ''Standards for Privacy of Individually Identifiable Health Information.''

In addition, our policy will be to prohibit release even of non-identifiable information, except pursuant to one of the routine uses, if there is a possibility that an individual can be identified through implicit deduction based on small cell sizes (instances where the patient population is so small that individuals who are familiar with the enrollees could, because of the small size, use this information to deduce the identity of the beneficiary).

IV. Safeguards

CMS has safeguards in place for authorized users and monitors such users to ensure against excessive or unauthorized use. Personnel having access to the system have been trained in the Privacy Act and information security requirements. Employees who maintain records in this system are instructed not to release data until the intended recipient agrees to implement appropriate management, operational and technical safeguards sufficient to protect the confidentiality, integrity and availability of the information and information systems and to prevent unauthorized access.

This system will conform to all applicable Federal laws and regulations and Federal, HHS, and CMS policies and standards as they relate to information security and data privacy. These laws and regulations include but are not limited to: the Privacy Act of 1974; the Federal Information Security Management Act of 2002; the Computer Fraud and Abuse Act of 1986; the Health Insurance Portability and Accountability Act of 1996; the E-Government Act of 2002, the Clinger-Cohen Act of 1996; the Medicare Modernization Act of 2003, and the corresponding implementing regulations. OMB Circular A–130, Management of Federal Resources, Appendix III, Security of Federal Automated Information Resources also applies. Federal, HHS, and CMS policies and standards include but are not limited to: all pertinent National Institute of Standards and Technology publications; the HHS Information Systems Program Handbook and the CMS Information Security Handbook.

V. Effect of the Modified System on Individual Rights

CMS proposes to establish this system in accordance with the principles and requirements of the Privacy Act and will collect, use, and disseminate information only as prescribed therein. We will only disclose the minimum personal data necessary to achieve the purpose of DDPS. Disclosure of information from the system will be approved only to the extent necessary to accomplish the purpose of the disclosure. CMS has assigned a higher level of security clearance for the information maintained in this system in an effort to provide added security and protection of data in this system.

CMS will take precautionary measures to minimize the risks of unauthorized access to the records and the potential harm to individual privacy or other personal or property rights. CMS will collect only that information necessary to perform the system's functions. In addition, CMS will make disclosure from the proposed system only with consent of the subject individual, or his/her legal representative, or in accordance with an applicable exception provision of the Privacy Act.

CMS, therefore, does not anticipate an unfavorable effect on individual privacy as a result of the disclosure of information relating to individuals.

Dated: September 28, 2005.

John R. Dyer,

Chief Operating Officer, Centers for Medicare & Medicaid Services.

System No. 09–70–0553

SYSTEM NAME:

Medicare Drug Data Processing System (DDPS), HHS/CMS/CBC.

SECURITY CLASSIFICATION:

Level Three Privacy Act Sensitive.

SYSTEM LOCATION:

CMS Data Center, 7500 Security Boulevard, North Building, First Floor, Baltimore, Maryland 21244–1850 and at various contractor sites.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The system contains summary prescription drug claim information on all Medicare covered and non-covered drug events, including non-Medicare drug events, for Medicare beneficiaries of the Medicare program.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains summary prescription drug claim data, health insurance claim number (HICN), card holder identification number, date of service, gender, and optionally, the date of birth. The system contains provider characteristics, prescriber identification number, assigned provider number (facility, referring/servicing physician), and national drug code, total charges, Medicare payment amount, and beneficiary's liability.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authority for maintenance of this system is given under provisions of the Medicare Prescription Drug, Improvement, and Modernization Act, amending the Social Security Act (the

Act) by adding Part D under Title XVIII (§ 1860D–15(c)(1)(C) and (d)(2), as described in 42 Code of Federal Regulation (CFR) § 423.401.

PURPOSE(S) OF THE SYSTEM:

The primary purpose of this system is to collect, maintain, and process information on all Medicare covered and non-covered drug events, including non-Medicare drug events, for Medicare beneficiaries participating in the Part D voluntary prescription drug coverage under the Medicare program. The system will process drug event transactions and other drug events as necessary for CMS to help determine appropriate payment of covered drugs. The DDPS will consist of the transaction validation processing, storing and maintaining the drug event data in a large-scale database, and staging the data into data marts to support beneficiary and plan analysis of incurred payment. Information in this system will also be disclosed to: (1) Support regulatory, reimbursement, and policy functions performed within the agency or by a contractor or consultant; (2) assist Quality Improvement Organizations; (3) assist Part D prescription drug plans; (4) support an individual or organization for a research, evaluation or epidemiological project; (5) support constituent requests made to a congressional representative; (6) support litigation involving the agency; and (7) combat fraud and abuse in certain health benefits programs.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OR USERS AND THE PURPOSES OF SUCH USES:

A. Entities Who May Receive Disclosures Under Routine Use

These routine uses specify circumstances, in addition to those provided by statute in the Privacy Act of 1974, under which CMS may release information from the DDPS without the consent of the individual to whom such information pertains. Each proposed disclosure of information under these routine uses will be evaluated to ensure that the disclosure is legally permissible, including but not limited to ensuring that the purpose of the disclosure is compatible with the purpose for which the information was collected. We propose to establish or modify the following routine use disclosures of information maintained in the system:

1. To Agency contractors or consultants who have been contracted by the Agency to assist in accomplishment of a CMS function relating to the purposes for this system and who need to have access to the records in order to assist CMS.

2. To Quality Improvement Organization (QIO) in connection with review of claims, or in connection with studies or other review activities conducted pursuant to Part B of Title XI of the Act and in performing affirmative outreach activities to individuals for the purpose of establishing and maintaining their entitlement to Medicare benefits or health insurance plans.

3. To Part D Prescription Drug Plans and their Prescription Drug Event submitters, providing protection against medical expenses of their enrollees without the beneficiary's authorization, and having knowledge of the occurrence of any event affecting (a) an individual's right to any such benefit or payment, or (b) the initial right to any such benefit or payment, for the purpose of coordination of benefits with the Medicare program and implementation of the Medicare Secondary Payer provision at 42 U.S.C. 1395y (b). Information to be disclosed shall be limited to Medicare utilization data necessary to perform that specific function. In order to receive the information, they must agree to:

a. Certify that the individual about whom the information is being provided is one of its insured or employees, or is insured and/or employed by another entity for whom they serve as a Third Party Administrator;

b. Utilize the information solely for the purpose of processing the individual's insurance claims; and

c. Safeguard the confidentiality of the data and prevent unauthorized access.

4. To an individual or organization for a research, evaluation, or epidemiological project related to the prevention of disease or disability, the restoration or maintenance of health, or payment-related projects.

5. To a Member of Congress or congressional staff member in response to an inquiry of the congressional office made at the written request of the constituent about whom the record is maintained.

6. To the Department of Justice (DOJ), court, or adjudicatory body when:

a. The Agency or any component thereof, or

b. Any employee of the Agency in his or her official capacity, or

c. Any employee of the Agency in his or her individual capacity where the DOJ has agreed to represent the employee, or

d. The United States Government, is a party to litigation or has an interest in such litigation, and by careful review, CMS determines that the records are both relevant and necessary to the litigation.

7. To a CMS contractor (including, but not limited to fiscal intermediaries and carriers) that assists in the administration of a CMS-administered health benefits program, or to a grantee of a CMS-administered grant program, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud or abuse in such program.

8. To another Federal agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States (including any state or local governmental agency), that administers, or that has the authority to investigate potential fraud or abuse in, a health benefits program funded in whole or in part by Federal funds, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud or abuse in such programs.

B. Additional Circumstances Affecting Routine Use Disclosures

This system contains Protected Health Information as defined by HHS regulation ''Standards for Privacy of Individually Identifiable Health Information'' (45 CFR Parts 160 and 164, 65 FR 82462 (Dec. 28, 00), as amended by 66 FR 12434 (Feb. 26, 01)). Disclosures of Protected Health Information authorized by these routine uses may only be made if, and as, permitted or required by the ''Standards for Privacy of Individually Identifiable Health Information.''

In addition, our policy will be to prohibit release even of non-identifiable information, except pursuant to one of the routine uses, if there is a possibility that an individual can be identified through implicit deduction based on small cell sizes (instances where the patient population is so small that individuals who are familiar with the enrollees could, because of the small size, use this information to deduce the identity of the beneficiary).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored on both tape cartridges (magnetic storage media) and in a DB2 relational database management environment (DASD data storage media).

RETRIEVABILITY:

Information is most frequently retrieved by HICN, provider number (facility, physician, IDs), service dates, and beneficiary state code.

SAFEGUARDS:

CMS has safeguards in place for authorized users and monitors such users to ensure against excessive or unauthorized use. Personnel having access to the system have been trained in the Privacy Act and information security requirements. Employees who maintain records in this system are instructed not to release data until the intended recipient agrees to implement appropriate management, operational and technical safeguards sufficient to protect the confidentiality, integrity and availability of the information and information systems and to prevent unauthorized access.

This system will conform to all applicable Federal laws and regulations and Federal, HHS, and CMS policies and standards as they relate to information security and data privacy. These laws and regulations include but are not limited to: the Privacy Act of 1974; the Federal Information Security Management Act of 2002; the Computer Fraud and Abuse Act of 1986; the Health Insurance Portability and Accountability Act of 1996; the E-Government Act of 2002, the Clinger-Cohen Act of 1996; the Medicare Modernization Act of 2003, and the corresponding implementing regulations. OMB Circular A–130, Management of Federal Resources, Appendix III, Security of Federal Automated Information Resources also applies. Federal, HHS, and CMS policies and standards include but are not limited to: All pertinent National Institute of Standards and Technology publications; the HHS Information Systems Program Handbook and the CMS Information Security Handbook.

RETENTION AND DISPOSAL:

Records are maintained with identifiers for all transactions after they are entered into the system for a period of 20 years. Records are housed in both active and archival files. All claims-related records are encompassed by the document preservation order and will be retained until notification is received from the Department of Justice.

SYSTEM MANAGER AND ADDRESS:

Director, Division of Program Analysis and Performance, Medicare Drug Benefit Group, Centers for Beneficiary Choices, CMS, Room S1–06–14, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

NOTIFICATION PROCEDURE:

For purpose of notification, the subject individual should write to the system manager who will require the system name, and the retrieval selection criteria (*e.g.*, HICN, facility/pharmacy number, service dates, etc.).

RECORD ACCESS PROCEDURE:

For purpose of access, use the same procedures outlined in Notification Procedures above. Requestors should also reasonably specify the record contents being sought. (These procedures are in accordance with Department regulation 45 CFR 5b.5(a)(2)).

CONTESTING RECORD PROCEDURES:

The subject individual should contact the system manager named above, and reasonably identify the record and specify the information to be contested. State the corrective action sought and the reasons for the correction with supporting justification. (These procedures are in accordance with Department regulation 45 CFR 5b.7).

RECORD SOURCE CATEGORIES:

Summary prescription drug claim information contained in this system is obtained from the Prescription Benefit Package (PBP) Plans and Medicare Advantage (MA-PBP) Plans daily and monthly drug event transaction reports, Medicare Beneficiary Database (09–70–0530), and other payer information to be provided by the TROOP Facilitator.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 05–19905 Filed 10–5–05; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

Privacy Act of 1974; Deletion of System of Records

AGENCY: Department of Health and Human Services (HHS), Centers for Medicare & Medicaid Services (CMS).

ACTION: Notice to delete 14 systems of records.

SUMMARY: CMS proposes to delete 14 systems of records from its inventory subject to the Privacy Act of 1974 (Title 5 United States Code 552a).

DATES: *Effective Date:* The deletions will be effective on September 27, 2005.

ADDRESSES: The public should address comments to: CMS Privacy Officer, Division of Privacy Compliance Data Development, Enterprise Databases Group, Office of Information Services, CMS, Room N2–04–27, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. The telephone number is (410) 786–5357. Comments received will be available for review at this location, by appointment, during regular business hours, Monday through Friday from 9 a.m.–3 p.m., eastern time zone.

SUPPLEMENTARY INFORMATION: CMS is reorganizing its databases because of the amount of information it collects to administer the Medicare program. Retention and destruction of the data contained in these systems will follow the schedules listed in the system notice. CMS is deleting the following systems of records.

Deletions

System No.	Title	System manager
09–70–0030	National Long-Term Care Study Follow-up	HHS/CMS/ORDI
09–70–0039	Evaluation of the Medicare Alzheimer's Disease Demonstration	HHS/CMS/ORDI
09–70–0040	Health Care Financing Administration Medicare Heart Transplant Data File	HHS/CMS/ORDI
09–70–0045	Evaluation of the Arizona Health Care Cost Containment and Long Term Care Systems Demonstration	HHS/CMS/ORDI
09–70–0046	Home Health Quality Indicator System	HHS/CMS/ORDI
09–70–0049	Evaluation of the Home Health Agency Prospective Payment Demonstration	HHS/CMS/ORDI
09–70–0050	The Medicare/Medicaid Multi-State Case Mix and Quality Data Base for Nursing Home Residents	HHS/CMS/ORDI
09–70–0051	Quality Assurance for the Home Health Agency Prospective Payment Demonstration	HHS/CMS/ORDI
09–70–0052	Post-Hospitalization Outcomes Studies	HHS/CMS/ORDI
09–70–0057	Evaluation of the Medicaid Extension of Eligibility to Certain Low Income Families Not Otherwise Qualified to Receive Medicaid Benefits Demonstration.	HHS/CMS/ORDI
09–70–0058	Evaluation of the Medicare SELECT Program	HHS/CMS/ORDI
09–70–0059	The Medicaid Necessity Appropriateness and Outcomes of Care Study	HHS/CMS/ORDI

System No.	Title	System manager
09–70–0063	Evaluation of the Medicaid Demonstration for Improving Access to Care for Substance Abusing Pregnant Women.	HHS/CMS/ORDI
09–70–0066	Evaluation of and External Quality Assurance for the Community Nursing Organization Demonstration	HHS/CMS/ORDI

Dated: September 27, 2005.

Charlene Brown,

Acting Chief Operating Officer, Centers for Medicare & Medicaid Services.

[FR Doc. 05–19906 Filed 10–5–05; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

Privacy Act of 1974; Report of a New System of Records

AGENCY: Department of Health and Human Services (HHS), Centers for Medicare & Medicaid Services (CMS).

ACTION: Notice of a new System of Records (SOR).

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, we are proposing to establish a new SOR titled ''Medicare Care Management Performance Demonstration (MCMP),'' System No. 09–70–0562. MCMP demonstration tests a payment methodology for physician practices that combines Medicare fee-for-service payments with performance-based payments for improvements in information technology systems, patient education, care management, and quality of care. Improvements in these areas are expected to generate savings to the Medicare program to offset the costs of the performance payments. Mandated by Section 649 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA), the MCMP Demonstration seeks to provide incentives for physicians to adopt and integrate information technology systems into their practices, and to improve quality as defined by key measurable outcomes.

The primary purpose of the system is to establish a pay-for-performance three year pilot with physicians to promote the adoption and use of health information technology to improve the quality of patient care for chronically ill Medicare patients. Information retrieved from this system will also be disclosed to: (1) Support regulatory, reimbursement, and policy functions performed within the agency or by a contractor or consultant; (2) assist another Federal or state agency with information to enable such agency to administer a Federal health benefits program, or to enable such agency to fulfill a requirement of Federal statute or regulation that implements a health benefits program funded in whole or in part with Federal funds; (3) assist an individual or organization for a research project or in support of an evaluation project related to the prevention of disease or disability, the restoration or maintenance of health, or payment related projects; (4) support constituent requests made to a congressional representative; (5) support litigation involving the agency; and (6) combat fraud and abuse in certain health benefits programs. We have provided background information about the new system in the ''Supplementary Information'' section below. Although the Privacy Act requires only that CMS provide an opportunity for interested persons to comment on the proposed routine uses, CMS invites comments on all portions of this notice. See ''Effective Dates'' section for comment period.

EFFECTIVE DATES: CMS filed a new system report with the Chair of the House Committee on Government Reform and Oversight, the Chair of the Senate Committee on Governmental Affairs, and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on September 27, 2005. In any event, we will not disclose any information under a routine use until 40 days after publication. We may defer implementation of this system or one or more of the routine use statements listed below if we receive comments that persuade us to defer implementation.

ADDRESSES: The public should address comments to: CMS Privacy Officer, Division of Privacy Compliance Data Development, CMS, Mail Stop N2–04–27, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. Comments received will be available for review at this location, by appointment, during regular business hours, Monday through Friday from 9 a.m.–3 p.m., eastern time zone.

FOR FURTHER INFORMATION CONTACT: Jody Blatt, Research Analyst, Division of Payment Policy, Medicare Demonstration Programs Group, Office of Research Development and Information, CMS, Mail Stop C4–17–27, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. The telephone number is (410) 786–6921 or e-mail *jody.blatt@cms.hhs.gov*.

SUPPLEMENTARY INFORMATION: Section 649 of (MMA) requires the Secretary of Health and Human Services to ''establish a pay-for-performance demonstration program with physicians to meet the needs of eligible beneficiaries through the adoption and use of health information technology and evidence-based outcomes measures.'' The resulting demonstration, known as MCMP Demonstration, provides incentives to primary care physician practices for (1) clinical systems, which encompasses the implementation and use of information technology, patient education, and care management, and (2) clinical quality, which encompasses using evidence-based outcome measures. The objectives of the demonstration are to: (1) Promote continuity of care, (2) stabilize medical conditions, (3) reduce adverse health outcomes, and (4) prevent or minimize acute episodes of chronic conditions that require an emergency room visit or hospitalization.

In the demonstration, payments will be made to physician practices that meet or exceed performance standards established by CMS. There will be two categories of performance payments. One payment will be made for clinical systems based on the number of patients who are Medicare beneficiaries with a chronic condition; and the other will be made for clinical quality based on the number of beneficiaries with the specific diseases of diabetes, congestive heart failure, or coronary artery disease. Payment for clinical quality will also be made for meeting standards on various screening measures. Payments can vary based on performance.

The three year demonstration project will be launched in four states, with up to 2,800 physicians from solo and small to medium-sized group practices participating, including practices in both urban and rural areas. The project is expected to become operational in 2006, with physicians being paid in 2006, 2007, and 2008. It will operate in the same four states as initiated the Doctor's Office Quality—Information Technology project (California, Utah,

Arkansas, and Massachusetts), thus allowing the Quality Improvement Organizations (QIOs) in those states to provide support to participating physicians.

I. Description of the New System of Records

A. Statutory and Regulatory Basis for System

The authority for maintenance of this system is given under the provisions of Section 649 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) (Public Law 108–173).

B. Collection and Maintenance of Data in the System

This system will maintain individually identifiable data collected on the Medicare expenditures of beneficiaries assigned to the participating physician practices. The data will consist of clinical quality measures collected from the individual physician practices participating in the demonstration. The collected information will contain: provider name, unique provider identification number, unique demonstration practice identification number, beneficiary health insurance claim number, and whether the beneficiary received the services described by the clinical measure and was counted in either the numerator and/or the denominator of the performance measure calculation for the physician.

II. Agency Policies, Procedures, and Restrictions on the Routine Use

A. The Privacy Act permits us to disclose information without an individual's consent if the information is to be used for a purpose that is compatible with the purpose(s) for which the information was collected. Any such disclosure of data is known as a ''routine use.'' The government will only release MCMP information that can be associated with an individual as provided for under ''Section III. Proposed Routine Use Disclosures of Data in the System.'' Both identifiable and non-identifiable data may be disclosed under a routine use.

We will only collect the minimum personal data necessary to achieve the purpose of MCMP. CMS has the following policies and procedures concerning disclosures of information that will be maintained in the system. Disclosure of information from the system will be approved only to the extent necessary to accomplish the purpose of the disclosure and only after CMS:

1. Determines that the use or disclosure is consistent with the reason that the data is being collected, *e.g.*, to collect and maintain data on Medicare expenditures of the beneficiaries assigned to participating physician practices that is relevant to calculating physician based performance on clinical quality measures and making performance payments to participating physician practices.

2. Determines that:

a. The purpose for which the disclosure is to be made can only be accomplished if the record is provided in individually identifiable information form;

b. The purpose for which the disclosure is to be made is of sufficient importance to warrant the effect and/or risk on the privacy of the individual that additional exposure of the record might bring; and

c. There is a strong probability that the proposed use of the data would in fact accomplish the stated purpose(s).

3. Requires the information recipient to:

a. Establish administrative, technical, and physical safeguards to prevent unauthorized use of disclosure of the record;

b. Remove or destroy at the earliest time all individually identifiable information; and

c. Agree to not use or disclose the information for any purpose other than the stated purpose under which the information was disclosed.

4. Determines that the data are valid and reliable.

III. Proposed Routine Use Disclosures of Data in the System

A. Entities Who May Receive Disclosures Under Routine Use

The Privacy Act allows us to disclose information without an individual's consent if the information is to be used for a purpose that is compatible with the purpose(s) for which the information was collected. Any such compatible use of data is known as a ''routine use.'' The proposed routine uses in this system meet the compatibility requirement of the Privacy Act. We are proposing to establish the following routine use disclosures of information maintained in the system:

1. To agency contractors or consultants who have been engaged by the agency to assist in the performance of a service related to this system and who need to have access to the records in order to perform the activity.

We contemplate disclosing information under this routine use only in situations in which CMS may enter into a contractual or similar agreement with a third party to assist in accomplishing CMS function relating to purposes for this system. CMS occasionally contracts out certain of its functions when doing so would contribute to effective and efficient operations. CMS must be able to give a contractor or consultant whatever information is necessary for the contractor or consultant to fulfill its duties. In these situations, safeguards are provided in the contract prohibiting the contractor or consultant from using or disclosing the information for any purpose other than that described in the contract and requires the contractor or consultant to return or destroy all information at the completion of the contract.

2. To another Federal or state agency to:

a. Contribute to the accuracy of CMS's proper payment of Medicare benefits,

b. Enable such agency to administer a Federal health benefits program, or as necessary to enable such agency to fulfill a requirement of a Federal statute or regulation that implements a health benefits program funded in whole or in part with Federal funds, and/or

c. Assist Federal/state Medicaid programs within the state.

Other Federal or state agencies in their administration of a Federal health program may require MCMP information in order to support evaluations and monitoring of Medicare claims information of beneficiaries, including proper reimbursement for services provided.

3. To an individual or organization for a research project or in support of an evaluation project related to the prevention of disease or disability, the restoration or maintenance of health, or payment related projects.

The MCMP data will provide for research or in support of evaluation projects, a broader, longitudinal, national perspective of the status of Medicare beneficiaries. CMS anticipates that many researchers will have legitimate requests to use these data in projects that could ultimately improve the care provided to Medicare beneficiaries and the policy that governs the care.

4. To a member of Congress or to a congressional staff member in response to an inquiry of the congressional office made at the written request of the constituent about whom the record is maintained.

Beneficiaries sometimes request the help of a member of Congress in resolving an issue relating to a matter before CMS. The member of Congress then writes CMS, and CMS must be able

to give sufficient information to be responsive to the inquiry.

5. To the Department of Justice (DOJ), court or adjudicatory body when:

a. The agency or any component thereof, or

b. Any employee of the agency in his or her official capacity, or

c. Any employee of the agency in his or her individual capacity where the DOJ has agreed to represent the employee, or

d. The United States Government is a party to litigation or has an interest in such litigation, and by careful review, CMS determines that the records are both relevant and necessary to the litigation and that the use of such records by the DOJ, court or adjudicatory body is compatible with the purpose for which the agency collected the records.

Whenever CMS is involved in litigation, and occasionally when another party is involved in litigation and CMS' policies or operations could be affected by the outcome of the litigation, CMS would be able to disclose information to the DOJ, court or adjudicatory body involved.

6. To a CMS contractor (including, but not necessarily limited to fiscal intermediaries and carriers) that assists in the administration of a CMS-administered health benefits program, or to a grantee of a CMS-administered grant program, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud or abuse in such program.

We contemplate disclosing information under this routine use only in situations in which CMS may enter into a contractual relationship or grant with a third party to assist in accomplishing CMS functions relating to the purpose of combating fraud and abuse.

CMS occasionally contracts out certain of its functions and makes grants when doing so would contribute to effective and efficient operations. CMS must be able to give a contractor or grantee whatever information is necessary for the contractor or grantee to fulfill its duties. In these situations, safeguards are provided in the contract prohibiting the contractor or grantee from using or disclosing the information for any purpose other than that described in the contract and requiring the contractor or grantee to return or destroy all information.

7. To another Federal agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States (including any state or local governmental agency), that administers, or that has the authority to investigate potential fraud or abuse in, a health benefits program funded in whole or in part by Federal funds, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud or abuse in such programs.

Other agencies may require information for the purpose of combating fraud and abuse in such Federally-funded programs.

B. Additional Provisions Affecting Routine Use Disclosures

This system contains Protected Health Information (PHI) as defined by HHS regulation ''Standards for Privacy of Individually Identifiable Health Information'' (45 Code of Federal Regulation Parts 160 and 164, 65 Fed. Reg. 82462 (12–28–00), Subparts A and E. Disclosures of PHI authorized by these routine uses may only be made if, and as, permitted or required by the ''Standards for Privacy of Individually Identifiable Health Information.''

In addition, our policy will be to prohibit release even of not directly identifiable information, except pursuant to one of the routine uses or if required by law, if we determine there is a possibility that an individual can be identified through implicit deduction based on small cell sizes (instances where the patient population is so small that individuals who are familiar with the enrollees could, because of the small size, use this information to deduce the identity of the beneficiary).

IV. Safeguards

CMS has safeguards in place for authorized users and monitors such users to ensure against excessive or unauthorized use. Personnel having access to the system have been trained in the Privacy Act and information security requirements. Employees who maintain records in this system are instructed not to release data until the intended recipient agrees to implement appropriate management, operational and technical safeguards sufficient to protect the confidentiality, integrity and availability of the information and information systems and to prevent unauthorized access.

This system will conform to all applicable Federal laws and regulations and Federal, HHS, and CMS policies and standards as they relate to information security and data privacy. These laws and regulations include but are not limited to: the Privacy Act of 1974; the Federal Information Security Management Act of 2002; the Computer Fraud and Abuse Act of 1986; the Health Insurance Portability and Accountability Act of 1996; the E–Government Act of 2002, the Clinger-Cohen Act of 1996; the Medicare Modernization Act of 2003, and the corresponding implementing regulations. OMB Circular A–130, Management of Federal Resources, Appendix III, Security of Federal Automated Information Resources also applies. Federal, HHS, and CMS policies and standards include but are not limited to: all pertinent National Institute of Standards and Technology publications; the HHS Information Systems Program Handbook and the CMS Information Security Handbook.

V. Effects of the New System on Individual Rights

CMS proposes to establish this system in accordance with the principles and requirements of the Privacy Act and will collect, use, and disseminate information only as prescribed therein. Data in this system will be subject to the authorized releases in accordance with the routine uses identified in this system.

CMS will take precautionary measures (see item IV. above) to minimize the risks of unauthorized access to the records and the potential harm to individual privacy or other personal or property rights of patients whose data is maintained in the system. CMS will collect only that information necessary to perform the system's functions. In addition, CMS will make disclosure from the proposed system only with consent of the subject individual, or his/her legal representative, or in accordance with an applicable exception provision of the Privacy Act.

CMS, therefore, does not anticipate an unfavorable effect on individual privacy as a result of maintaining this system.

Dated: September 27, 2005.

Charlene Brown,

Acting Chief Operating Officer, Centers for Medicare & Medicaid Services.

System No.: 09–70–0562

SYSTEM NAME:

''Medicare Care Management Performance Demonstration (MCMP)'' HHS/CMS/ORDI.

SECURITY CLASSIFICATION:

Level 3 Privacy Act Sensitive.

SYSTEM LOCATION:

This system is maintained at the Centers for Medicare & Medicaid

Services (CMS) Data Center, 7500 Security Boulevard, North Building, First Floor, Baltimore, Maryland 21244–1850, and CMS contractors and agents at various locations.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The data will be maintained on individual physicians participating in the demonstration. In order to collect this data and use it to determine incentive payments to physicians, the system will also maintain individually identifiable information on Medicare beneficiaries assigned to physicians participating in the demonstration.

CATEGORIES OF RECORDS IN THE SYSTEM:

The data will consist of clinical quality measures collected from physician participating in the demonstration. The collected information will contain provider name, unique provider identification number, unique demonstration practice identification number, beneficiary health insurance claim number (HICN), beneficiary demographic and diagnostic information relevant to the measure, and whether the beneficiary received the services described by the clinical measure and was counted in either the numerator and/or the denominator of the performance measure calculation for the physician.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The authority for maintenance of this system is given under the provisions of Section 649 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Public Law 108–173).

PURPOSE(S) OF THE SYSTEM:

The primary purpose of the system is to establish a pay-for-performance three year pilot with physicians to promote the adoption and use of health information technology to improve the quality of patient care for chronically ill Medicare patients. Information retrieved from this system will also be disclosed to: (1) Support regulatory, reimbursement, and policy functions performed within the agency or by a contractor or consultant; (2) assist another Federal or state agency with information to enable such agency to administer a Federal health benefits program, or to enable such agency to fulfill a requirement of Federal statute or regulation that implements a health benefits program funded in whole or in part with Federal funds; (3) assist an individual or organization for a research project or in support of an evaluation project related to the prevention of disease or disability, the restoration or maintenance of health, or payment related projects; (4) support constituent requests made to a congressional representative; (5) support litigation involving the agency; and (6) combat fraud and abuse in certain health benefits programs.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OR USERS AND THE PURPOSES OF SUCH USES:

A. Entities Who May Receive Disclosures Under Routine Use

The Privacy Act allows us to disclose information without an individual's consent if the information is to be used for a purpose that is compatible with the purpose(s) for which the information was collected. Any such compatible use of data is known as a ''routine use.'' The proposed routine uses in this system meet the compatibility requirement of the Privacy Act. We are proposing to establish the following routine use disclosures of information maintained in the system:

1. To agency contractors or consultants who have been engaged by the agency to assist in the performance of a service related to this system and who need to have access to the records in order to perform the activity.

2. To another Federal or state agency to:

a. Contribute to the accuracy of CMS's proper payment of Medicare benefits,

b. Enable such agency to administer a Federal health benefits program, or as necessary to enable such agency to fulfill a requirement of a Federal statute or regulation that implements a health benefits program funded in whole or in part with Federal funds, and/or

c. Assist Federal/state Medicaid programs within the state.

3. To an individual or organization for a research project or in support of an evaluation project related to the prevention of disease or disability, the restoration or maintenance of health, or payment related projects.

4. To a member of Congress or to a congressional staff member in response to an inquiry of the congressional office made at the written request of the constituent about whom the record is maintained.

5. To the Department of Justice (DOJ), court or adjudicatory body when:

a. The agency or any component thereof, or

b. Any employee of the agency in his or her official capacity, or

c. Any employee of the agency in his or her individual capacity where the DOJ has agreed to represent the employee, or

d. The United States Government is a party to litigation or has an interest in such litigation, and by careful review, CMS determines that the records are both relevant and necessary to the litigation and that the use of such records by the DOJ, court or adjudicatory body is compatible with the purpose for which the agency collected the records.

6. To a CMS contractor (including, but not necessarily limited to fiscal intermediaries and carriers) that assists in the administration of a CMS-administered health benefits program, or to a grantee of a CMS-administered grant program, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud or abuse in such program.

7. To another Federal agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States (including any state or local governmental agency), that administers, or that has the authority to investigate potential fraud or abuse in, a health benefits program funded in whole or in part by Federal funds, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud or abuse in such programs.

B. Additional Provisions Affecting Routine Use Disclosures

This system contains Protected Health Information (PHI) as defined by Department of Health and Human Services (HHS) regulation ''Standards for Privacy of Individually Identifiable Health Information'' (45 Code of Federal Regulations (CFR) Parts 160 and 164, 65 FR 82462 (12–28–00), Subparts A and E. Disclosures of PHI authorized by these routine uses may only be made if, and as, permitted or required by the ''Standards for Privacy of Individually Identifiable Health Information.''

In addition, our policy will be to prohibit release even of not directly identifiable information, except pursuant to one of the routine uses or if required by law, if we determine there is a possibility that an individual can be identified through implicit deduction based on small cell sizes (instances where the patient population is so small that individuals who are familiar with the enrollees could, because of the small size, use this information to deduce the identity of the beneficiary).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

All records are stored on magnetic media.

RETRIEVABILITY:

Information collected will be retrieved by the name or other identifying information of the participating provider, and may also be retrievable by HICN at the individual beneficiary record level.

SAFEGUARDS:

CMS has safeguards in place for authorized users and monitors such users to ensure against excessive or unauthorized use. Personnel having access to the system have been trained in the Privacy Act and information security requirements. Employees who maintain records in this system are instructed not to release data until the intended recipient agrees to implement appropriate management, operational and technical safeguards sufficient to protect the confidentiality, integrity and availability of the information and information systems and to prevent unauthorized access.

This system will conform to all applicable Federal laws and regulations and Federal, HHS, and CMS policies and standards as they relate to information security and data privacy. These laws and regulations include but are not limited to: the Privacy Act of 1974; the Federal Information Security Management Act of 2002; the Computer Fraud and Abuse Act of 1986; the Health Insurance Portability and Accountability Act of 1996; the E–Government Act of 2002, the Clinger-Cohen Act of 1996; the Medicare Modernization Act of 2003, and the corresponding implementing regulations. Office of Management and Budget Circular A–130, Management of Federal Resources, Appendix III, Security of Federal Automated Information Resources also applies. Federal, HHS, and CMS policies and standards include but are not limited to: all pertinent National Institute of Standards and Technology publications; the HHS Information Systems Program Handbook and the CMS Information Security Handbook.

RETENTION AND DISPOSAL:

CMS will retain identifiable information maintained in the MCMP system of records for a period of 6 years. Data residing with the designated claims payment contractor shall be returned to CMS at the end of the project, with all data then being the responsibility of CMS for adequate storage and security. All claims-related records are encompassed by the document preservation order and will be retained until notification is received from the DOJ.

SYSTEM MANAGER AND ADDRESS:

Director, Medicare Demonstration Program Group, Office of Research Development and Information, CMS, 7500 Security Boulevard, Mail stop C4–17–27, Baltimore, Maryland, 21244–1850.

NOTIFICATION PROCEDURE:

For purpose of access, the subject individual should write to the system manager who will require the system name, and for verification purposes, the subject individual's name, provider identification number, and the patient's medical record number.

RECORD ACCESS PROCEDURE:

For purpose of access, use the same procedures outlined in Notification Procedures above. Requestors should also reasonably specify the record contents being sought. (These procedures are in accordance with Department regulation 45 CFR 5b.5 (a)(2)).

CONTESTING RECORD PROCEDURES:

The subject individual should contact the system manager named above, and reasonably identify the record and specify the information to be contested. State the corrective action sought and the reasons for the correction with supporting justification. (These procedures are in accordance with Department regulation 45 CFR 5b.7).

RECORD SOURCE CATEGORIES:

Information maintained in this system will be collected from physicians volunteering to participate in the MCMP Demonstration. Additional data will be collected from Medicare claims payment records.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 05–19907 Filed 10–5–05; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

The Essentials of Food and Drug Administration Device Regulations: A Primer for Manufacturers and Suppliers; Public Workshop

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop.

SUMMARY: The Food and Drug Administration (FDA) Philadelphia District, in cooperation with AdvaMed's Medical Technology Learning Institute, is announcing a public workshop on FDA device regulations. This 1 1/2-day public workshop for start up and small device manufacturers and their suppliers will include both industry and FDA perspectives and a question and answer period.

Date and Time: The public workshop will be held on Tuesday, October 11, 2005, from 8:30 a.m. to 5:30 p.m. and Wednesday, October 12, 2005, from 8:30 a.m. to 12 noon.

Location: The public workshop will be held at The Wyndham Philadelphia at Franklin Plaza, 17th and Race St., Philadelphia, PA 19103, 215–448–2000. For further hotel information and driving directions, go to *http://www.wyndham.com/hotels/PHLFP*. (FDA has verified the Web site address, but is not responsible for subsequent changes to the Web site after this document publishes in the **Federal Register**.)

Contact:

For FDA: Judy Summers-Gates, Food and Drug Administration, rm. 900, U.S. Customhouse, 200 Chestnut St., Philadelphia, PA 19106, 215–717–3008, FAX: 215–597–4660, e-mail: *judith.summers-gates@fda.gov*.

For AdvaMed: Krystine McGrath, 202–434–7237, FAX: 202–783–8750, *kmcgrath@advamed.org*; or Dia Black, 202–434–7231, FAX: 202–783–8750, e-mail: *dblack@avamed.org*.

Registration: Send registration information (including name, title, firm name, address, telephone, and fax number), and the registration fee of $350 per person to the AdvaMed contacts (see *Contact*). The registration fee for FDA employees is waived. To register via the Internet go to *http://www.advamed.org/philadelphia*. (FDA has verified the Web site address, but is not responsible for subsequent changes to the Web site after this document publishes in the **Federal Register**.)

Payment forms accepted are major credit card (MasterCard, Visa, or American Express) or company check. If you wish to pay by check contact Krystine McGrath (see *Contact*). For more information on the meeting, or for questions on registration, contact Krystine McGrath or Dia Black (see *Contact*). Attendees are responsible for their own accommodations.

The registration fee will be used to offset the expenses of hosting the workshop, including meals (breakfasts and a lunch), refreshments, meeting rooms, and training materials. It also includes a networking reception on Tuesday, October 11, 2005. Space is limited, therefore interested parties are encouraged to register early. There will be no onsite registration.

If you need special accommodations due to a disability, please contact Judy Summers-Gates at least 7 days in advance of the workshop.

SUPPLEMENTARY INFORMATION: The ''Essentials of FDA Device Regulations: A Primer for Manufacturers and Suppliers'' workshop helps fulfill the Department of Health and Human Services' and FDA's important mission to protect the public health by educating new entrepreneurs on the essentials of FDA device regulations. FDA has made education of the medical device community a high priority to assure the quality of products reaching the marketplace and to increase the rate of voluntary industry compliance with regulations.

The workshop helps to implement the objectives of section 903 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 393) and the FDA Plan for Statutory Compliance, which includes working more closely with stakeholders and ensuring access to needed scientific and technical expertise. The workshop also furthers the goals of the Small Business Regulatory Enforcement Fairness Act (Public Law 104–121) by providing outreach activities by government agencies directed to small businesses.

The following topics will be discussed at the workshop:

- Doing business in a regulated industry;
- Organizational structure of FDA;
- The quality system regulations and inspections;
- Complaints, medical device reporting, corrections, and recalls;
- Compliance issues;
- Management responsibility;
- Interacting with FDA—where do you go for assistance?;
- General question and answer session;
- Manufacturers and suppliers—the chain of regulatory responsibility;
- Reimbursement and medical rechnology;
- The AdvaMed code of ethics; and
- Fraud and abuse.

Dated: September 30, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05–20093 Filed 10–5–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2005D–0391]

Draft Guidance for Industry and Food and Drug Administration Staff; Functional Indications for Implantable Cardioverter Defibrillators; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the draft guidance entitled ''Functional Indications for Implantable Cardioverter Defibrillators.'' Many implantable cardioverter defibrillators (ICDs) currently have a functional indication. This draft guidance is designed to describe ICD functional indications and the types of devices appropriate for the indication; to provide guidance regarding labeling, advertising, and promotion of ICDs with an approved functional indication and cardiac resynchronization therapy defibrillators (CRT/ICDs) with an approved indication that describes the function of the ICD component; and to discuss when to submit an application for an investigational device exemption (IDE) for a study involving a potential new patient population for an ICD with an approved functional indication.

DATES: Submit written or electronic comments on this draft guidance by January 4, 2006.

ADDRESSES: Submit written requests for single copies on a 3.5″ diskette of the guidance document entitled ''Functional Indications for Implantable Cardioverter Defibrillators'' to the Division of Small Manufacturers, International, and Consumer Assistance (HFZ–220), Center for Devices and Radiological Health, Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send one self-addressed adhesive label to assist that office in processing your request, or fax your request to 301–443–8818. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance.

Submit written comments concerning this draft guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. Identify comments with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT:

For premarket issues: Owen Faris or Megan Moynahan, Center for Devices and Radiological Health (HFZ–450), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–443–8517.

For promotion and advertising issues: Deborah Wolf, Center for Devices and Radiological Health (HFZ–302), Food and Drug Administration, 2094 Gaither Rd., Rockville, MD 20850, 301–594–4589.

SUPPLEMENTARY INFORMATION:

I. Background

Prior to June 2000, the indication statement for ICDs included language to describe the types of patients who would benefit from an ICD. If a manufacturer demonstrated in a clinical trial that a new patient population benefited from its ICD, that manufacturer could submit a premarket approval application (PMA) supplement to update its indication statement to include that new patient population. That manufacturer could then promote its ICD as indicated for the new population. On June 20, 2000, FDA held a public meeting of the Circulatory Systems Devices Panel to introduce the concept of a functional indication. The functional indication describes what the device does and does not explicitly specify as an indicated patient population or expected outcome. FDA presented the functional indication as a least burdensome method of allowing the clinical community to identify the patient populations that would benefit from an ICD. The panel endorsed the functional indication concept for ICDs and, since that time, FDA has approved a functional indication for most manufacturers' ICDs. This guidance document is intended to discuss the intended patient population for ICDs with an approved functional indication and CRT/ICDs with an approved indication that describes the function of the ICD component, labeling, advertising, and promotion of those ICDs and CRT/ICDs, and when to submit an application for an IDE for a

study involving a potential new patient population for an ICD with an approved functional indication.

II. Significance of Guidance

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized will represent the agency's current thinking on functional indications for ICDs. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute and regulations.

III. Electronic Access

To receive ''Functional Indications for Implantable Cardioverter Defibrillators '' by fax, call the CDRH Facts-On-Demand system at 800–899–0381 or 301–827–0111 from a touch-tone telephone. Press 1 to enter the system. At the second voice prompt, press 1 to order a document. Enter the document number 1304 followed by the pound sign (#). Follow the remaining voice prompts to complete your request.

Persons interested in obtaining a copy of the draft guidance may also do so by using the Internet. CDRH maintains an entry on the Internet for easy access to information including text, graphics, and files that may be downloaded to a personal computer with Internet access. Updated on a regular basis, the CDRH home page includes device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturer's assistance, information on video conferencing and electronic submissions, Mammography Matters, and other device-oriented information. The CDRH Web site may be accessed at *http://www.fda.gov/cdrh*. A search capability for all CDRH guidance documents is available at *http://www.fda.gov/cdrh/guidance.html*. Guidance documents are also available on the Division of Dockets Management Internet site at *http://www.fda.gov/ohrms/dockets*.

IV. Paperwork Reduction Act of 1995

This draft guidance contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501–3520). The collections of information addressed in the draft guidance document have been approved by OMB in accordance with the PRA under the regulations governing IDEs (21 CFR part 812, OMB control number 0910–0078) and PMAs (21 CFR part 814, OMB control number 0910–0231). The labeling provisions addressed in the guidance have been approved by OMB under OMB control number 0910–0485.

V. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**), written or electronic comments regarding this document on or before January 4, 2006. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: September 29, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05–20092 Filed 10–5–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOMELAND SECURITY

[DHS–2005–0066]

Office of Inspector General; Privacy Act of 1974; Systems of Records

AGENCY: Office of Investigations, Office of Inspector General, Department of Homeland Security.

ACTION: Notice of revised Privacy Act systems of records.

SUMMARY: In accordance with the Privacy Act of 1974, the Department of Homeland Security Office of Inspector General is giving notice of a revised and updated system of records titled, ''Investigations Data Management System (IDMS).''

DATES: Comments must be received on or before November 7, 2005.

ADDRESSES: You may submit comments, identified by Docket Number DHS–2005–0066, 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. DHS has joined the Environmental Protection Agency (EPA) online public docket and comment system on its Partner Electronic Docket System (Partner EDOCKET).

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Fax: (202) 254–4285 (This is not a toll-free number).

Mail: Richard N. Reback, DHS, Office of Inspector General/STOP 2600, 245 Murray Drive, SW., Building 410, Washington, DC 20528.

Hand Delivery/Courier: Richard N. Reback, DHS, Office of Inspector General/STOP 2600, 245 Murray Drive, SW., Building 410, Washington, DC 20528.

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

Docket: For access to the docket to read background documents or comments received, go to *http://www.epa.gov/feddocket.* You may also access the Federal eRulemaking Portal at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Richard N. Reback, Department of Homeland Security, Office of Inspector General/STOP 2600, 245 Murray Drive, SW., Building 410, Washington, DC 20528 by telephone (202) 254–4100 or facsimile (202) 254–4285; Nuala O'Connor Kelly, Chief Privacy Officer, Department of Homeland Security, 601 S. 12th Street, Arlington, VA 22202–4202 by telephone (571) 227–3813 or facsimile (571) 227–4171.

SUPPLEMENTARY INFORMATION:

The Privacy Act embodies fair information principles in a statutory framework governing the means by which the United States Government collects, maintains, uses and disseminates personally identifiable information. The Privacy Act applies to information that is maintained in a ''system of records.'' A ''system of records'' is a group of any records under the control of an agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual. The Privacy Act requires each agency to publish in the **Federal Register** a description denoting the type and character of each system of records that the agency maintains, and the routine uses that are contained in each system in order to make agency record keeping practices transparent, to notify individuals regarding the uses to which personally identifiable information is put, and to assist the individual in finding such files within the agency.

The Department of Homeland Security (DHS), Office of Inspector

General (OIG) is updating and republishing a Privacy Act system of records within OIG Headquarters for its investigative files. Pursuant to the savings clause in the Homeland Security Act of 2002, Public Law 107–296, sec. 1512, 116 Stat. 2310 (Nov. 25, 2002) (6 U.S.C. 552), DHS components and offices could continue to rely on completed administrative actions after creation of the Department until those actions were amended, modified, superseded, terminated, set aside, or revoked. Two system notices previously supported the collection of investigation information by the DHS OIG, FEMA/IG–1 (General Investigative Files) and Treasury/DO .190 (Investigation Data Management System). The DHS OIG is now updating and republishing under its own nomenclature a system notice the Investigations Data Management System to cover the same records previously covered by these legacy system notices.

The DHS Inspector General is responsible for conducting and supervising audits, investigations, and inspections relating to the programs and operations of the Department. The OIG examines, evaluates and, where necessary, critiques these operations and activities, recommending ways for the Department to carry out its responsibilities in the most effective, efficient, and economical manner possible.

The Investigations Data Management System (IDMS) allows the OIG to receive and process allegations of violations of criminal, civil, or administrative laws and regulations relating to DHS employees, contractors and other individuals and entities associated with the DHS. IDMS also allows the OIG to manage information provided during the course of such investigations and, in the process, to facilitate its management of investigations. Through the IDMS, the OIG can create a record showing the disposition of allegations; track actions taken by DHS management regarding misconduct; track legal actions taken after referrals to the United States Department of Justice for prosecution; provide a system for creating reporting statistical information; and track OIG investigators' firearms qualification records and government property records.

This system notice makes several changes to the existing record systems on which DHS had been relying. It changes the address of the system location, revises the routine uses to conform them more closely to the needs and requirements of DHS, and more fully describes the categories of individuals and of records that are maintained in IDMS.

In accordance with 5 U.S.C. 552a(r), a report of this revised system of records has been provided to the Office of Management and Budget (OMB) and to the Congress.

DHS–OIG–002

SYSTEM NAME:

Department of Homeland Security (DHS) Office of Inspector General (OIG) Investigations Data Management System (IDMS).

SECURITY CLASSIFICATION:

Classified, sensitive.

SYSTEM LOCATION:

This system of records is located in the OIG Office of Investigations in Washington, DC and in OIG field offices nationwide.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals filing complaints of criminal, civil, or administrative violations, including, but not limited to, fraud, waste, or mismanagement; individuals alleged to have been involved in such violations; individuals identified as having been adversely affected by matters investigated by the OIG; individuals who have been identified as possibly relevant to, or who are contacted as part of an OIG investigation, including: (A) Current and former employees of DHS; United States Department of the Treasury, United States Department of Justice, and Federal Emergency Management Administration legacy employees; and persons whose association with current and former employees relate to alleged violations which affect the integrity or facilities of the DHS; and, (B) witnesses, complainants, confidential or non-confidential informants, suspects, defendants, or parties who have been identified by the DHS OIG, other DHS units, other agencies, or members of the general public in connection with authorized OIG functions; and DHS OIG Office of Investigations employees who are required to qualify with firearms and receive government property.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records include: (A) letters, memoranda, and other documents citing complaints of alleged criminal or administrative misconduct; (B) investigative files, which include: (1) Reports of investigation resulting from allegations of misconduct or violations of law with related exhibits, statements, affidavits, records or other pertinent documents (including those obtained from other sources, such as Federal, State, local, or foreign investigative or law enforcement agencies and other government agencies) obtained during investigations; (2) transcripts and documentation concerning requests and approval for consensual (telephone and non-telephone) monitoring; (3) reports from or to other law enforcement bodies; (4) prior criminal or non-criminal records of individuals as they relate to investigations; (5) subpoenas issued pursuant to OIG investigations and legal opinions, advice, and other legal documents provided by agency counsel; (6) reports of actions taken by management personnel regarding misconduct allegations and reports of legal actions, including actions resulting from violations of statutes referred to the United States Department of Justice for prosecution; (7) records involving the disposition of investigations and resulting agency actions (e.g., criminal prosecutions, civil proceedings, administrative action); and (8) other documentation and materials created during the course of or arising out of OIG investigations; and (C) property records and Firearms and Training qualification records for all OIG Office of Investigations employees;

Records contain the name and/or other personal identifying information for OIG Office of Investigations employees; names and other personal identifying information for individuals who are investigated or involved as complainants, witnesses, informants, or otherwise in OIG investigations; and details relating to investigations and complaints, such as the date of the complaint; case number(s); name of the complainant; matters alleged; referral documents; research materials; and other documentation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C.A. App. 3; 5 U.S.C. 301; 6 U.S.C. 101, 113(b), 555.

PURPOSE(S):

The records and information collected and maintained in this system are used to receive and process allegations of violations of criminal, civil, and administrative laws and regulations relating to DHS programs, operations, and employees, as well as contractors and other individuals and entities associated with the DHS; monitor case assignments, disposition, status, and results; manage investigations and information provided during the course of such investigations; track actions taken by management regarding misconduct and other allegations; track legal actions taken following referrals to the United States Department of Justice

for prosecution or litigation; provide information relating to any adverse action or other proceeding that may occur as a result of the findings of an investigation; retrieve investigation results performed on individuals covered in this system; provide a system for creating and reporting statistical information; and to provide a system to track OIG investigator's firearms qualification records and property records.

ROUTINE USES OF THESE RECORDS:

In addition to those disclosures generally permitted under 5 U.S.C. 552a (b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside DHS as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

(A) To an appropriate Federal, State, territorial, tribal, local, or foreign law enforcement agency, licensing entity, or other appropriate authority charged with investigating, enforcing, prosecuting, or implementing a law (criminal, civil, administrative, or regulatory), where DHS becomes aware of an indication of a violation or potential violation of such law or where required in response to a compulsory legal process.

(B) To Federal intelligence community agencies and other Federal agencies to further the mission of those agencies relating to persons who may pose a risk to homeland security.

(C) To international governmental authorities in accordance with law and formal or informal international agreement.

(D) To a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil or criminal discovery or proceedings, litigation, and settlement negotiations.

(E) To Federal, State, local, or foreign government entities or professional licensing authorities responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, or where DHS OIG becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation or where DHS has received a request for information that is relevant or necessary to the requesting entity's hiring or retention of an employee, or the issuance of a security clearance, license, contract, grant, or other benefit.

(F) To contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the Federal Government, when necessary to accomplish an agency function related to this system of records.

(G) To the United States Department of Justice or other Federal agency conducting litigation or in proceedings before any court, adjudicative or administrative body, when: (a) DHS; (b) any employee of DHS in his/her official capacity; (c) any employee of DHS in his/her individual capacity where the Department of Justice or DHS has agreed to represent the employee; or, (d) the United States or any agency thereof, is a party to the litigation or has an interest in such litigation.

(H) To third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

(I) To a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of the individual to whom the record pertains.

(J) To the National Archives and Records Administration or other Federal Government agencies pursuant to records management inspections being conducted under the authority of 44 U.S.C. 2904 and 2906.

(K) To appropriate persons engaged in conducting and reviewing internal and external peer reviews of the OIG to ensure adequate internal safeguards and management procedures exist or to ensure that auditing standards applicable to Government audits are applied and followed.

(L) To the President's Council on Integrity and Efficiency (PCIE) and other Federal agencies, as necessary, if the records respond to an audit, investigation or review which is conducted pursuant to an authorizing law, rule or regulation, and in particular those conducted at the request of the PCIE pursuant to Executive Order No. 12993.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in this system are stored on paper media and in digital or other electronic form in a secure Local Area Network (LAN) server and/or Wide Area Network (WAN) environment.

RETRIEVABILITY:

Paper media are retrieved alphabetically by name of subject or complainant, by case number, and/or by special agent name and/or employee identifying number. Electronic media are retrieved by the name or identifying number for a complainant, subject, victim, or witness; by case number; by special agent name or other personal identifier; or by regional office designation.

SAFEGUARDS:

Information in this system is safeguarded in accordance with applicable laws, rules and policies, including the DHS Information Technology Security Program Handbook. All records are protected from unauthorized access through appropriate administrative, physical, and technical safeguards. These safeguards include restricting access to authorized personnel who have a need-to-know and using locks and password protection identification features. IDMS file areas are locked at all times, and facilities are protected from the outside by security personnel.

RETENTION AND DISPOSAL:

Investigative files are stored at OIG's Office of Investigations in Washington, DC, and in OIG field offices. OIG is in the process of developing a records retention schedule in conjunction with the National Archives and Records Administration (NARA).

SYSTEM MANAGER(S) AND ADDRESSES:

The System Manager is the Assistant Inspector General for Investigations, OIG Office of Investigations/STOP 2600, 245 Murray Drive, SW., Building 410, Washington, DC 20528.

NOTIFICATION PROCEDURES:

To determine whether this system contains records relating to you, write to the System Manager identified above.

RECORD ACCESS PROCEDURES:

Same as ''Notification Procedures'' above. Provide your full name and a description of information that you seek, including the time frame during which the record(s) may have been generated. Individuals requesting access must comply with the Department of Homeland Security's Privacy Act regulations on verification of identity (6 CFR 5.21(d)).

CONTESTING RECORD PROCEDURES:

See ''Notification procedures'' and ''Record access procedures'' stated above.

RECORD SOURCE CATEGORIES:

The information in this system of records is obtained from sources including, but not limited to, the individual record subjects; DHS officials

and employees; employees of Federal, State, local, and foreign agencies; and other persons and entities.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Pursuant to 5 U.S.C. 552a(j)(2) this system is exempt from the following provisions of the Privacy Act: 5 U.S.C. 552a (c)(3) and (4); (d); (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(5) and (e)(8); (f)(2) through (5); and (g). Pursuant to 5 U.S.C. 552a (k)(1), (k)(2) and (k)(5), this system is exempt from the following provisions of the Privacy Act, subject to the limitations set forth in those subsections: 5 U.S.C. 552a (c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), and (f).

Dated: September 26, 2005.

Nuala O'Connor Kelly,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. 05–20038 Filed 10–5–05; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Proposed Collection; Comment Request Application for Extension of Bond for Temporary Importation

AGENCY: Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, CBP invites the general public and other Federal agencies to comment on an information collection requirement concerning the Application for Extension of Bond for Temporary Importation. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before December 5, 2005, to be assured of consideration.

ADDRESSES: Direct all written comments to the Bureau of Customs and Border Protection, Information Services Group, Room 3.2.C, 1300 Pennsylvania Avenue, NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to the Bureau of Customs and Border Protection, Attn.: Tracey Denning, Room 3.2.C, 1300 Pennsylvania Avenue NW., Washington, DC 20229, Tel. (202) 344–1429.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual cost burden to respondents or record keepers from the collection of information (a total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

Title: Application for Extension of Bond for Temporary Importation.

OMB Number: 1651–0015.

Form Number: CBP Form 3173.

Abstract: Imported merchandise that is to remain in the Customs territory for one year or less without duty payment is entered as a temporary importation. The importer may apply for an extension of this period on CBP Form 3173.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Business or other for-profit institutions.

Estimated Number of Respondents: 16,800.

Estimated Time Per Respondent: 1 minute.

Estimated Total Annual Burden Hours: 348.

Estimated Total Annualized Cost on the Public: N/A.

Dated: September 28, 2005.

Tracey Denning,

Agency Clearance Officer, Information Services Branch.

[FR Doc. 05–20112 Filed 10–5–05; 8:45 am]

BILLING CODE 9110–06–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Proposed Collection; Comment Request; NAFTA Regulations and Certificate of Origin

AGENCY: Customs and Border Protection (CBP), Department of Homeland Security

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, CBP invites the general public and other Federal agencies to comment on an information collection requirement concerning the NAFTA Regulations and Certificate of Origin. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before December 5, 2005, to be assured of consideration.

ADDRESSES: Direct all written comments to the Bureau of Customs and Border Protection, Tracey Denning, Information Services Group, Room 3.2.C, 1300 Pennsylvania Avenue, NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to the Bureau of Customs and Border Protection, Attn.: Tracey Denning, Room 3.2.C, 1300 Pennsylvania Avenue, NW., Washington, DC 20229, Tel. (202) 344–1429.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual cost burden to respondents or record keepers from the collection of information (a total capital/startup costs and operations and maintenance costs).

The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document the CBP is soliciting comments concerning the following information collection:

Title: NAFTA Regulations and Certificate of Origin.

OMB Number: 1651–0098.

Form Number: CBP Forms 434 and 446.

Abstract: The objectives of NAFTA are to eliminate barriers to trade in goods and services between the United States, Mexico, and Canada; facilitate conditions of fair competition within the free trade area; liberalize significantly conditions for investments within the free trade area; establish effective procedures for the joint administration of the NAFTA; and the resolution of disputes.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension.

Affected Public: Business or other for-profit institutions.

Estimated Number of Respondents: 120,050.

Estimated Time Per Respondent: 15 minutes.

Estimated Total Annual Burden Hours: 30,037.

Estimated Total Annualized Cost on the Public: N/A.

Dated: September 28, 2005.

Tracey Denning,

Agency Clearance Officer, Information Services Branch.

[FR Doc. 05–20113 Filed 10–5–05; 8:45 am]

BILLING CODE 9110–06–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Proposed Collection; Comment Request; Guam Visa Waiver Information (I–736)

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Customs and Border Protection (CBP) invites the general public and other Federal agencies to comment on an information collection requirement concerning the Guam Visa Waiver Information. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before December 5, 2005, to be assured of consideration.

ADDRESSES: Direct all written comments to the Bureau of Customs and Border Protection, Attn: Tracey Denning, Information Services Group, Room 3.2.C, 1300 Pennsylvania Avenue, NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to the Bureau of Customs and Border Protection, Attn.: Tracey Denning, Room 3.2.C, 1300 Pennsylvania Avenue NW., Washington, DC 20229, Tel. (202) 344–1429.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Guam Visa Waiver Information.

OMB Number: 1651–0109.

Form Number: CBP Form I–736.

Abstract: The CBP Form I–736 is used to track an alien's application for waiver of the nonimmigrant visa requirement for entry into Guam.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension.

Affected Public: Individuals.

Estimated Number of Respondents: 170,000.

Estimated Time Per Respondent: 5 minutes.

Estimated Total Annual Burden Hours: 14,110.

Estimated Total Annualized Cost on the Public: N/A.

Dated: September 28, 2005.

Tracey Denning,

Agency Clearance Officer, Information Services Branch.

[FR Doc. 05–20117 Filed 10–5–05; 8:45 am]

BILLING CODE 9110–06–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Proposed Collection; Comment Request; Transfer of Cargo to a Container Station

AGENCY: Bureau of Customs and Border Protection (CBP) and Border Protection, Department of Homeland Security.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, CBP invites the general public and other Federal agencies to comment on an information collection requirement concerning the Transfer of Cargo to a Container Station. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before December 5, 2005, to be assured of consideration.

ADDRESS: Direct all written comments to the Bureau of Customs and Border Protection, Attn: Tracey Denning, Information Services Group, Room 3.2.C, 1300 Pennsylvania Avenue, NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to the Bureau of Customs and Border Protection, Attn.: Tracey Denning, Room 3.2.C, 1300 Pennsylvania Avenue, NW., Washington, DC 20229, Tel. (202) 344–1429.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have

practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual costs burden to respondents or record keepers from the collection of information (a total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

Title: Transfer of Cargo to a Container Station.

OMB Number: 1651–0096.

Form Number: None.

Abstract: The container station operator may file an application for transfer of a container to a container station which is moved from the place of unlading, or from a bonded carrier after transportation in-bond before filing of the entry for the purpose of breaking bulk and redelivery.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension.

Affected Public: Business or other for-profit institutions.

Estimated Number of Respondents: 21,660.

Estimated Time per Respondent: 7 minutes.

Estimated Total Annual Burden Hours: 2,513.

Estimated Total Annualized Cost on the Public: N/A.

Dated: September 28, 2005.

Tracey Denning,

Agency Clearance Officer, Information Services Branch.

[FR Doc. 05–20118 Filed 10–5–05; 8:45 am]

BILLING CODE 9110–06–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Proposed Collection; Comment Request; Bond Procedures for Articles Subject to Exclusion Orders Issued by the U.S. International Trade Commission

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Customs and Border Protection (CBP) invites the general public and other Federal agencies to comment on an information collection requirement concerning the Bond Procedures for Articles Subject to Exclusion Orders Issued by the U.S. International Trade Commission. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before December 5, 2005, to be assured of consideration.

ADDRESSES: Direct all written comments to the Bureau of Customs and Border Protection Service, Attn: Tracey Denning, Information Services Group, Room 3.2.C, 1300 Pennsylvania Avenue, NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to the Bureau of Customs and Border Protection Service, Attn.: Tracey Denning, Room 3.2.C, 1300 Pennsylvania Avenue NW., Washington, DC 20229, Tel. (202) 344–1429.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

Title: Bond Procedures for Articles Subject to Exclusion Orders Issued by the U.S. International Trade Commission.

OMB Number: 1651–0099.

Form Number: None.

Abstract: This collection is required to ensure compliance with section 337 of the Tariff Act of 1930, as amended by section 321 of the Uruguay Round Agreements regarding bond procedures for entry of articles subject to exclusion orders issued by the U.S. International Trade Commission.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension.

Affected Public: Businesses.

Estimated Number of Respondents: 100.

Estimated Time Per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 50.

Estimated Total Annualized Cost on the Public: N/A.

Dated: September 28, 2005.

Tracey Denning,

Agency Clearance Officer, Information Services Branch.

[FR Doc. 05–20119 Filed 10–5–05; 8:45 am]

BILLING CODE 9110–06–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Proposed Collection; Comment Request; Customs Modernization Act Recordkeeping Requirements

AGENCY: Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, CBP invites the general public and other Federal agencies to comment on an information collection requirement concerning the Customs Modernization Act Recordkeeping Requirements. This request for comment

is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before December 5, 2005, to be assured of consideration.

ADDRESS: Direct all written comments to the Bureau of Customs and Border Protection, Information Services Group, Attn.: Tracey Denning, 1300 Pennsylvania Avenue, NW., Room 3.2C, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to the Bureau of Customs and Border Protection, Attn.: Tracey Denning, 1300 Pennsylvania Avenue, NW., Room 3.2C, Washington, DC 20229, Tel. (202) 344–1429.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

Title: Customs Modernization Act Recordkeeping Requirements.

OMB Number: 1651–0076.

Form Number: None.

Abstract: This information and records keeping requirement is required to allow CBP to verify the accuracy of the claims made on the entry documents regarding the tariff status of imported merchandise, admissibility, classification/nomenclature, value and rate of duty applicable to the entered goods.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Businesses, Individuals, Institutions.

Estimated Number of Respondents: 6,070.

Estimated Time Per Respondent: 957 hours.

Estimated Total Annual Burden Hours: 5,812,010.

Estimated Total Annualized Cost on the Public: N/A.

Dated: September 28, 2005.

Tracey Denning,

Agency Clearance Officer, Information Services Branch.

[FR Doc. 05–20120 Filed 10–5–05; 8:45 am]

BILLING CODE 9110–06–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Proposed Collection; Comment Request; Andean Trade Preferences

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Customs and Border Protection (CBP) invites the general public and other Federal agencies to comment on an information collection requirement concerning Andean Trade Preferences. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before December 5, 2005, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Customs and Border Protection, Information Services Group, Attn.: Tracey Denning, 1300 Pennsylvania Avenue, NW., Room 3.2C, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to the Bureau of Customs and Border Protection, Attn.: Tracey Denning, 1300 Pennsylvania Avenue NW., Room 3.2C, Washington, DC 20229, Tel. (202) 344–1429.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

Title: Andean Trade Preferences.

OMB Number: 1651–0091.

Form Number: None.

Abstract: This collection identifies the country of origin and related rules which apply for purposes of duty-free or reduced-duty treatment and specifies the documentary and other procedural requirements for preferential tariff treatment under the Andean Trade Preferences Act 19 U.S.C. 3201 through 3206.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Businesses, Individuals, Institutions.

Estimated Number of Respondents: 48,000.

Estimated Time Per Respondent: 10 minutes.

Estimated Total Annual Burden Hours: 7,968.

Estimated Total Annualized Cost on the Public: N/A.

Dated: September 28, 2005.

Tracey Denning,

Agency Clearance Officer, Information Services Branch.

[FR Doc. 05–20121 Filed 10–5–05; 8:45 am]

BILLING CODE 9110–06–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Proposed Collection; Comment Request; Application for Withdrawal of Bonded Stores for Fishing Vessels and Certification of Use

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Customs and Border Protection (CBP) invites the general public and other Federal agencies to comment on an information collection requirement concerning the Application for Withdrawal of Bonded Stores For Fishing Vessels and Certification of Use. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before December 5, 2005, to be assured of consideration.

ADDRESSES: Direct all written comments to the Bureau of Customs and Border Protection, Attn: Tracey Denning, Information Services Group, Room 3.2.C, 1300 Pennsylvania Avenue, NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to the Bureau of Customs and Border Protection, Attn.: Tracey Denning, Room 3.2.C, 1300 Pennsylvania Avenue NW., Washington, DC 20229, Tel. (202) 344–1429.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Application for Withdrawal of Bonded Stores For Fishing Vessels and Certification of Use.

OMB Number: 1651–0092.

Form Number: CBP Form 5125.

Abstract: The CBP Form 5125 is used for the withdrawal and lading of bonded merchandise (especially alcoholic beverages) for use on board fishing vessels. The form also certifies the use: total consumption or partial consumption with secure storage for use on next voyage.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension.

Affected Public: Businesses.

Estimated Number of Respondents: 500.

Estimated Time Per Respondent: 5 minutes.

Estimated Total Annual Burden Hours: 42.

Estimated Total Annualized Cost on the Public: N/A.

Dated: September 28, 2005.

Tracey Denning,

Agency Clearance Officer, Information Services Branch.

[FR Doc. 05–20122 Filed 10–5–05; 8:45 am]

BILLING CODE 9110–06–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Proposed Collection; Comment Request; Declaration of Owner of Merchandise Obtained (Other Than) in Pursuance of a Purchase or Agreement To Purchase and Declaration of Importer of Record When Entry Is Made by an Agent

AGENCY: Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, CBP invites the general public and other Federal agencies to comment on an information collection requirement concerning the Declaration of Owner of Merchandise Obtained (other than) in Pursuance of a Purchase or Agreement To Purchase and Declaration of Importer of Record When Entry Is Made by an Agent. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before December 5, 2005, to be assured of consideration.

ADDRESSES: Direct all written comments to the Bureau of Customs and Border Protection, Attn: Tracey Denning, Information Services Group, Room 3.2.C, 1300 Pennsylvania Avenue, NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to the Bureau of Customs and Border Protection, Attn.: Tracey Denning, Room 3.2.C, 1300 Pennsylvania Avenue, NW., Washington, DC 20229, Tel. (202) 344–1429.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual costs burden to respondents or recordkeepers from the collection of information (a total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

Title: Declaration of Owner of Merchandise Obtained (other than) in Pursuance of a Purchase or Agreement To Purchase and Declaration of Importer of Record When Entry Is Made by an Agent.

OMB Number: 1651–0093.

Form Number: CBP Forms 3347 and 3347A.

Abstract: CBP Forms 3347 and 3347A allow an agent to submit, subsequent to

making the entry, the declaration of the importer of record that is required by statute. These forms also permit a nominal importer of record to file the declaration of the actual owner and to be relieved of statutory liability for the payment of increased duties.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension.

Affected Public: Business or other for-profit institutions.

Estimated Number of Respondents: 5,700.

Estimated Time per Respondent: 6 minutes.

Estimated Total Annual Burden Hours: 570.

Estimated Total Annualized Cost on the Public: N/A.

Dated: September 28, 2005.

Tracey Denning,

Agency Clearance Officer, Information Services Branch.

[FR Doc. 05–20123 Filed 10–5–05; 8:45 am]

BILLING CODE 9110–06–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Proposed Collection; Comment Request; Declaration of a Person Abroad Who Receives and Is Returning Merchandise to the U.S.

AGENCY: Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, CBP invites the general public and other Federal agencies to comment on an information collection requirement concerning the Declaration of a Person Abroad Who Receives and Is Returning Merchandise to the U.S. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before December 5, 2005, to be assured of consideration.

ADDRESSES: Direct all written comments to the Bureau of Customs and Border Protection, Attn: Tracey Denning, Information Services Group, Room 3.2.C, 1300 Pennsylvania Avenue, NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to the Bureau of Customs and Border Protection, Attn: Tracey Denning, Room 3.2.C, 1300 Pennsylvania Avenue NW., Washington, DC 20229, Tel. (202) 344–1429.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual costs burden to respondents or recordkeepers from the collection of information (a total capital/startup costs and operations and maintenance costs. The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document the CBP is soliciting comments concerning the following information collection:

Title: Declaration of a Person Abroad Who Receives and Is Returning Merchandise to the U.S.

OMB Number: 1651–0094.

Form Number: None.

Abstract: This declaration is used under conditions where articles are imported and then exported and then reimported free of duty due. The declaration is to insure CBP control over duty-free merchandise.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension.

Affected Public: Individuals, business or other for-profit institutions.

Estimated Number of Respondents: 1500.

Estimated Time Per Respondent: 10 minutes.

Estimated Total Annual Burden Hours: 250.

Estimated Total Annualized Cost on the Public: N/A.

Dated: September 28, 2005.

Tracey Denning,

Agency Clearance Officer, Information Services Branch.

[FR Doc. 05–20124 Filed 10–5–05; 8:45 am]

BILLING CODE 9110–06–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Proposed Collection; Comment Request; Textile and Textile Products

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Customs and Border Protection (CBP) invites the general public and other Federal agencies to comment on an information collection requirement concerning Textile and Textile Products. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before December 5, 2005, to be assured of consideration.

ADDRESSES: Direct all written comments to the Bureau of Customs and Border Protection Attn: Tracey Denning, Information Services Group, Room 3.2.C, 1300 Pennsylvania Avenue, NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to the Bureau of Customs and Border Protection; Attn.: Tracey Denning, Room 3.2.C, 1300 Pennsylvania Avenue NW., Washington, DC 20229, Tel. (202) 344–1429. .

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and

costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

Title: Textile and Textile Products.

OMB Number: 1651–0095.

Form Number: None.

Abstract: Information is needed for CBP to be able to identify the Country of Origin of Textiles. The requirement prevents circumvention of bilateral agreements and ensures the proper assessment of duties. The declaration will be executed by the foreign manufacturer, exporter, or U.S. importer to be filed with the entry.

Current Actions: There are no changes to the information collection.

Type of Review: Extension.

Affected Public: Businesses.

Estimated Number of Respondents: 45,810.

Estimated Time Per Respondent: 7 minutes.

Estimated Total Annual Burden Hours: 133,582.

Estimated Total Annualized Cost on the Public: N/A.

Dated: September 28, 2005.

Tracey Denning,

Agency Clearance Officer, Information Services Branch.

[FR Doc. 05–20125 Filed 10–5–05; 8:45 am]

BILLING CODE 9110–06–U

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Proposed Collection; Comment Request; Importers of Merchandise Subject to Actual Use Provisions

AGENCY: Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, CBP invites the general public and other Federal agencies to comment on an information collection requirement concerning Importer's of Merchandise Subject to Actual Use Provisions. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before December 5, 2005, to be assured of consideration.

ADDRESSES: Direct all written comments to the Bureau of Customs and Border Protection, Information Services Group, Attn.: Tracey Denning, 1300 Pennsylvania Avenue, NW., Room 3.2.C, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to the Bureau of Customs and Border Protection, Attn.: Tracey Denning, 1300 Pennsylvania Avenue NW., Room 3.2C, Washington, DC 20229, Tel. (202) 344–1429.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document, CBP is soliciting comments concerning the following information collection:

Title: Importers of Merchandise Subject to Actual Use Provisions.

OMB Number: 1651–0032.

Form Number: None.

Abstract: The Importers of Merchandise Subject to Actual Use Provision is part of the regulation that provides that certain items may be admitted duty-free such as farming implements, seed, potatoes etc., providing the importer can prove these items were actually used as contemplated by law. The importer must maintain detailed records and furnish a statement of use.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Individuals, Businesses.

Estimated Number of Respondents: 12,000.

Estimated Time Per Respondent: 65 minutes.

Estimated Total Annual Burden Hours: 13,000.

Estimated Total Annualized Cost on the Public: N/A.

Dated: September 28, 2005.

Tracey Denning,

Agency Clearance Officer, Information Services Group.

[FR Doc. 05–20126 Filed 10–5–05; 8:45 am]

BILLING CODE 9110–06–U

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Proposed Collection; Comment Request; Bonded Warehouse Proprietor's Submission

AGENCY: Bureau of Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, the CBP invites the general public and other Federal agencies to comment on an information collection requirement concerning the Bonded Warehouse Proprietor's Submission. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before December 5, 2005, to be assured of consideration.

ADDRESSES: Direct all written comments to the Bureau of Customs and Border Protection, Information Services Group, Room 3.2.C, 1300 Pennsylvania Avenue, NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to the Bureau of Customs and Border Protection, Attn.: Tracey Denning, Information Services Group, Room 3.2.C, 1300 Pennsylvania Avenue NW., Washington, DC 20229, Tel. (202) 344–1429.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork

Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual costs burden to respondents or record keepers from the collection of information (a total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document the CBP is soliciting comments concerning the following information collection:

Title: Bonded Warehouse Proprietor's Submission.

OMB Number: 1651–0033.

Form Number: Form 300.

Abstract: CBP Form 300 is prepared by Bonded Warehouse Proprietor and submitted to CBP annually. The document reflects all bonded merchandise entered, released, and manipulated, and includes beginning and ending inventories.

Current Actions: There are no changes to this information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Business or other for-profit institutions.

Estimated Number of Respondents: 1,800.

Estimated Time Per Respondent: 24 hours.

Estimated Total Annual Burden Hours: 43,740.

Estimated Total Annualized Cost on the Public: N/A.

Dated: September 28, 2005.

Tracey Denning,

Agency Clearance Officer, Information Services Branch.

[FR Doc. 05–20127 Filed 10–5–05; 8:45 am]

BILLING CODE 9110–06–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Proposed Collection; Comment Request; Declaration of Person Who Performed Repairs

AGENCY: Customs and Border Protection (CBP), Department of Homeland Security

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, CBP invites the general public and other Federal agencies to comment on an information collection requirement concerning the Declaration of a Person Who Performed Repairs. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before December 5, 2005, to be assured of consideration.

ADDRESS: Direct all written comments to the Bureau of Customs and Border Protection, Information Services Group, Attn.: Tracey Denning, 1300 Pennsylvania Avenue, NW., Room 3.2C, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to the Bureau of Customs and Border Protection, Attn.: Tracey Denning, 1300 Pennsylvania Avenue, NW., Room 3.2C, Washington, DC 20229, Tel. (202) 344–1429.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

Title: Declaration of Person Who Performed Repairs.

OMB Number: 1651–0048.

Form Number: None.

Abstract: The Declaration of Person Who Performed Repairs is used by CBP to ensure duty-free status for entries covering articles repaired aboard. It must be filed by importers claiming duty-free status.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Businesses or other for-profit.

Estimated Number of Respondents: 20,472.

Estimated Time per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 10,236.

Estimated Total Annualized Cost on the Public: N/A.

Dated: September 28, 2005.

Tracey Denning,

Agency Clearance Officer, Information Services Branch.

[FR Doc. 05–20128 Filed 10–5–05; 8:45 am]

BILLING CODE 9110–06–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection Proposed Collection; Comment Request

Harbor Maintenance Fee

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, the Bureau of Customs and Border Protection (CBP) invites the general public and other Federal agencies to comment on an information collection requirement concerning the Harbor Maintenance Fee. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before December 5, 2005, to be assured of consideration.

ADDRESSES: Direct all written comments to the Bureau of Customs and Border

Protection, Information Services Group, Room 3.2.C, 1300 Pennsylvania Avenue, NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to the Bureau of Customs and Border Protection, Attn.: Tracey Denning, Room 3.2.C, 1300 Pennsylvania Avenue, NW., Washington, DC 20229, Tel. (202) 344–1429.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document, CBP is soliciting comments concerning the following information collection:

Title: Harbor Maintenance Fee.

OMB Number: 1651–0055.

Form Number: CBP Forms 349 and 350.

Abstract: This collection of information will be used to verify that the Harbor Maintenance Fee paid is accurate and current for each individual, importer, exporter, shipper, or cruise line.

Current Actions: There are no changes to the information collection. This submission is to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Businesses, Institutions.

Estimated Number of Respondents: 5,200.

Estimated Time per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 2,816.

Estimated Total Annualized Cost on the Public: N/A.

Dated: September 28, 2005.

Tracey Denning,

Agency Clearance Officer, Information Services Branch.

[FR Doc. 05–20129 Filed 10–5–05; 8:45 am]

BILLING CODE 9110–06–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Proposed Collection; Comment Request; Country of Origin Marking Requirements for Containers or Holders

AGENCY: Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, CBP invites the general public and other Federal agencies to comment on an information collection requirement concerning the Country of Origin Marking Requirements for Containers or Holders. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before December 5, 2005, to be assured of consideration.

ADDRESSES: Direct all written comments to the Bureau of Customs and Border Protection, Information Services Group, Room 3.2.C, 1300 Pennsylvania Avenue, NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to the Bureau of Customs and Border Protection, Attn.: Tracey Denning, Room 3.2.C, 1300 Pennsylvania Avenue NW., Washington, DC 20229, Tel. (202) 344–1429.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual costs burden to respondents or record keepers from the collection of information (a total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

Title: Country of Origin Marking Requirements for Containers or Holders.

OMB Number: 1651–0057.

Form Number: None.

Abstract: Containers or Holders imported into the United States destined for an ultimate purchaser must be marked with the English name of the country of origin at the time of importation into Customs territory.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Business or other for-profit institutions.

Estimated Number of Respondents: 10,000.

Estimated Time Per Respondent: 15 seconds.

Estimated Total Annual Burden Hours: 41.

Estimated Total Annualized Cost on the Public: N/A.

Dated: September 28, 2005.

Tracey Denning,

Agency Clearance Officer, Information Services Branch.

[FR Doc. 05–20130 Filed 10–5–05; 8:45 am]

BILLING CODE 9110–06–U

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4971–N–51]

Notice of Submission of Proposed Information Collection to OMB; Builder's Certification/Guarantee and New Construction Subterranean Termite Soil Treatment Record

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below

has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

Builders must certify HUD insured structures to be free of termite hazards. Authorized pest control companies must perform treatments for termites. The builder guarantees the treated area against infestation for one year. A reassessment of the burden has led to the determination that the information collected is a standard and usual business practice. The collection of this information is an industry wide standard; not solely an FHA requirement.

DATES: *Comments Due Date:* November 7, 2005.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Approval Number (2502–0525) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov;* or Lillian Deitzer at *Lillian_L_Deitzer@HUD.gov* or telephone (202) 708–2374. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Mr. Eddins or Ms. Deitzer or from HUD's Web site at *http://hlannwp031.hud.gov/po/i/icbts/collectionsearch.cfm.*

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Builder's Certification/Guarantee and New Construction Subterranean Termite Soil Treatment Record.

OMB Approval Number: 2502–0525.

Form Numbers: HUD–NPCA–99–A and HUD–NPCA–99–B.

Description of the Need for the Information and Its Proposed Use: Builders must certify HUD insured structures to be free of termite hazards. Authorized pest control companies must perform treatments for termites. The builder guarantees the treated area against infestation for one year. A reassessment of the burden has led to the determination that the information collected is a standard and usual business practice. The collection of this information is an industry wide standard; not solely an FHA requirement.

Frequency of Submission: On occasion.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	13,500		4	0.165		8,910

Total Estimated Burden Hours: 8,910.

Status: Extension of a currently approval collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: September 28, 2005.

Wayne Eddins,

Departmental Paperwork Reduction Act Officer, Office of the Chief Information Officer.

[FR Doc. E5–5467 Filed 10–5–05; 8:45 am]

BILLING CODE 4210–72–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4912–N–16]

Notice of Availability of a Supplement to the Draft Environmental Impact Statement for the Development of Stillwater Business Park, City of Redding, CA

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: HUD gives notice to the public, agencies, and Indian tribes that the City of Redding, CA, has prepared a Supplement to the Draft Environmental Impact Statement (SDEIS)/ Environmental Impact Report (EIR) for the Stillwater Business Park project located in Redding, CA. The comment period on the DEIS closed in early May 2005. The City of Redding, CA has prepared the Supplement to the Draft EIS/EIR under its authority as the responsible entity for compliance with the National Environmental Policy Act (NEPA) in accordance with 42 U.S.C. 3547(c) and HUD regulations at 24 CFR 58.4 and under its authority as lead agency in accordance with the California Environmental Quality Act (CEQA). The Supplement to the Draft EIS/EIR is a joint NEPA and CEQA document. The EIR will satisfy requirements of the CEQA (Public Resources Code 21000 *et seq.*) and state CEQA Guidelines (14 California Code of Regulations 15000 *et seq.*) that require all state and local government agencies to consider the environmental consequences of projects over which they have discretionary authority before acting on those projects. Because HUD Economic Development Initiative (EDI) special project funds would be used, the proposed action is also subject to NEPA. EPA, State and Tribal Assistance Grants (STAG) will also fund water and wastewater related infrastructure. EPA is acting as a cooperating agency for this process. This notice is given in accordance with the Council on Environmental Quality regulations at 40 CFR parts 1500–1508. All interested Federal, State, and local agencies, Indian tribes, groups, and the public are invited to comment on the supplement to the draft EIS.

DATES: *Comment Due Date:* Comments must be received within 45 days from the date this notice is published. Written comments on the SDEIS/EIR should be addressed to the contact person listed below.

FOR FURTHER INFORMATION CONTACT: Nathan Cherpeski, City of Redding, 777 Cypress Ave., Redding, CA 96001;

telephone (530) 225–4519, e-mail: *mailto:ncherpeski@ci.redding.ca.us.*

The SDEIS/EIR is available on the Internet and can be viewed or downloaded at: *http://ci.redding.ca.us/cm/major_pr/still_buspk.html.*

Copies of the SDEIS/EIR are also available for review at the following locations:

City of Redding, Permit Center, 777 Cypress Ave, Redding, CA 96001.

Shasta County Department of Resource Management, Planning Division, 1855 Placer Street, Redding, CA 96001.

Shasta County Library, 1855 Shasta Street, Redding, CA 96001.

Shasta County Library—Anderson Branch, 3200 West Center, Anderson, CA 96007.

SUPPLEMENTARY INFORMATION: A Notice of Intent to prepare a draft EIS was published May 11, 2004. A Draft EIS/EIR (050103) was circulated in early 2005. The comment period for that document closed on May 2, 2005. Modifications made to the project, since that time, are the subject of this SDEIS/EIR. The proposed action is the development of a large parcel business park through the acquisition of land and the construction of major infrastructure components and the provision of public services and utilities to serve the development. The City of Redding is proposing the development of the area east and northeast of the Municipal Airport in Redding, California. The proposed action study area is located on the Enterprise and Cottonwood, California 7.5-minute USGS quadrangles, Township 31 North, Range 4 West, Sections 2, 3, 10, 14, 15, 22, 23, 26, 34, and 35. The purpose and need for this project is to increase the activity of contributory economic sectors by constructing a medium to large parcel business park within the City of Redding sphere of influence capable of attracting and accommodating diverse business and industrial users.

The SDEIS/EIR focuses on additional information in the purpose and need discussion, and Alternatives 2 and 3. Tables, figures, and pertinent text discussions have been updated as necessary. The changes in the alternatives analysis focus on the following:

Alternative 2: (Preferred Alternative): Significant changes since the DEIS include a reduction in the developable acreage from 383 acres to approximately 340 acres. The set-aside and open space area increased from approximately 250 acres to approximately 290 acres. All development was eliminated from the watershed that feeds the adjacent Stillwater Plains. Easements will prevent infrastructure expansion to the north or east of the project's immediate boundaries. Additional buffers were added to protect sensitive areas.

Alternative 3: The SDEIS includes updated information on endangered species not available at the release of the earlier DEIS.

The SDEIS/SDEIR addresses the following environmental issues: hydrology, biological resources, erosion control, growth inducing effects, and secondary and cumulative impacts.

Questions may be directed to the individual named above under the heading **FOR FURTHER INFORMATION CONTACT**.

Dated: September 26, 2005.

Pamela H. Patenaude,

Assistant Secretary for Community Planning and Development.

[FR Doc. E5–5463 Filed 10–5–05; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR 4950–FA–09]

Announcement of Funding Awards for Fiscal Year 2005 Alaska Native/Native Hawaiian Institutions Assisting Communities Program

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102 (a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this document notifies the public of funding awards for Fiscal Year 2005 Alaska Native/Native Hawaiian Institutions Assisting Communities Program. The purpose of this document is to announce the names, addresses and the amount awarded to the winners to be used to assist Alaska Native/Native Hawaiian institutions of higher education to expand their role and effectiveness in addressing communities in their localities, consistent with the purpose of Title I of the Housing and Community Development Act of 1974, as amended.

FOR FURTHER INFORMATION CONTACT: Susan Brunson, Office of University Partnerships, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW., Room 8106, Washington, DC 20410, telephone (202) 708–3061, ext. 3852. To provide service for persons who are hearing- or speech-impaired, this number may be reached via TTY by dialing the Federal Information Relay Service on (800) 877–8339 or (202) 708–1455. (Telephone numbers, other than ''800'' TTY numbers are not toll free.)

SUPPLEMENTARY INFORMATION: The Alaska Native/Native Hawaiian Institutions Assisting Communities Program was approved by Congress under section 107 of the Community Development Block Grant appropriations for the fiscal year 2005, and is administered by the Office of University Partnerships under the Office of the Assistant Secretary for Policy Development and Research. In addition to this program, the Office of University Partnerships administers HUD's ongoing grant programs to institutions of higher education as well as creates initiatives through which colleges and universities can bring their traditional missions of teaching, research, service, and outreach to bear on the pressing local problems in their communities.

The AN/NHIAC program provides funds for a wide range of CDBG-eligible activities including housing rehabilitation and financing, property demolition or acquisition, public facilities, economic development, business entrepreneurship, and fair housing programs.

The Catalog Federal Domestic Assistance number for this program is 14.515.

On March 21, 2005 (FR 70, No 53, 13722), HUD published a Notice of Funding Availability (NOFA) announcing the availability of $3.9 million appropriated in FY 05, plus an additional $267,000 in previously unobligated funds. Each eligible campus was permitted to apply individually for $800,000, the maximum amount that can be awarded for a period of 36 months.

The Department reviewed, evaluated, and scored the applications received based on the criteria in the NOFA. As a result, HUD has funded the applications below, in accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, 42 U.S.C. 3545).

List of Awardees for Grant Assistance Under the FY 2005 Alaska Native/Native Hawaiian Institutions Assisting Communities Program Funding Competition, by Institution, Address and Grant Amount

Region X

1. University of Alaska, Fairbanks/Chukchi Campus, Mr. Lincoln Saito, University of Alaska, Fairbanks/Chukchi Campus, UAF Grants and

Contracts Services, PO Box 757880, Fairbanks, AK 99775. Grant: $799,988.

2. University of Alaska, Fairbanks/Bristol Bay Campus, Dr. Deborah McLean, University of Alaska, Fairbanks/Bristol Bay Campus, PO Box 757560, Fairbanks, AK 99775. Grant: $799,437.

3. Illisagvik College, Ms. Karen Stretch, Illisagvik College, PO Box 749, Barrow, AK 99723. Grant: $800,000

Region IX

4. University of Hawaii/West Oahu, Dr. June Aono, University of Hawaii/West Oahu, 2530 Dole State, Sakamaki D–200, Honolulu, HI 96822. Grant: $800,000.

5. University of Hawaii/Maui Community College, Mr. Lui Hokoana, University of Hawaii/Maui Community College, 2530 Dole Street, Sakamaki D–200, Honolulu, HI 96822. Grant: $800,000

Dated: September 22, 2005.

Harold L. Bunce,

Deputy Assistant Secretary for Economic Affairs.

[FR Doc. E5–5466 Filed 10–5–05; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4950–FA–12]

Announcement of Funding Awards for Fiscal Year 2005 Historically Black Colleges and Universities Program

AGENCY: Office of the Assistant Secretary for Policy Development and Research, Housing and Urban Development.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102 (a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this document notifies the public of funding awards for Fiscal Year 2005 Historically Black Colleges and Universities Program. The purpose of this document is to announce the names, addresses and the amount awarded to the winners to be used to help Historically Black Colleges and Universities (HBCUs) expand their role and effectiveness in addressing community development needs in their localities, consistent with the purposes of HUD's Community Development Block Grant program (CDBG).

FOR FURTHER INFORMATION CONTACT: Susan Brunson, Office of University Partnerships, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW., Room 8106, Washington, DC 20410, telephone (202) 708–3061, ext. 3852. To provide service for persons who are hearing-or-speech-impaired, this number may be reached via TTY by Dialing the Federal Information Relay Service on (800) 877–8339 or (202) 708–1455. (Telephone numbers, other than ''800'' TTY numbers are not toll free.)

SUPPLEMENTARY INFORMATION: The Historically Black Colleges and Universities Program was enacted under section 107 of the CDBG appropriation for Fiscal Year 2005, as part of the ''Veterans Administration, HUD and Independent Agencies Appropriations Act of 2002'' and is administered by the Office of University Partnerships under the Assistant Secretary for Policy Development and Research. In addition to this program, the Office of University Partnerships administers HUD's ongoing grant programs to institutions of higher education as well as creates initiatives through which colleges and universities can bring their traditional missions of teaching, research, service, and outreach to bear on the pressing local problems in their communities.

The HBCU program provides funds for a wide range of CDBG-eligible activities including housing rehabilitation and financing, property demolition or acquisition, public facilities, economic development, business entrepreneurship, and fair housing programs.

The Catalog Federal Domestic Assistance number for this program is 14.520.

On March 21, 2005 (70 FR 13693), HUD published a Notice of Funding Availability (NOFA) announcing the availability of $9.92 million in Fiscal Year 2005, plus $3.327 million in previously unobligated funds for the HBCU program. Of this amount, $2.4 million was made available to HBCU applicants that had not been funded in the past (applicants could request up to $400,000) and $10.8 million to HBCU applicants that had been previously funded (applicants could request up to $600,000). The Department reviewed, evaluated, and scored the applications received based on the criteria in the NOFA. As a result, HUD has funded the applications below, in accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, 42 U.S.C. 3545).

List of Awardees for Grant Assistance Under the FY 2005 Historically Black Program Funding Competition, by Institution, Address, and Grant Amount

Region III

1. Howard University, Dr. Rodney Green, Howard University, 2400 6th Street, NW., Washington, DC 20059. Grant: $600,000.

2. Delaware State University, Dr. John N. Austin, Delaware State University, 1200 North Dupont Highway, Dover, DE 19901. Grant: $588,056.

Region IV

3. Fort Valley State University, Mrs. Dollie D. Horton, Fort Valley State University, 1005 State University Drive, Fort Valley, GA 31030. Grant: $600,000.

4. LeMoyne-Owen College, Mr. Jeffrey Higgs, LeMoyne-Owen College, 807 Walker Avenue, Memphis, TN 38126. Grant: $599,428.

5. Winston-Salem State University, Ms. Valerie Howard, Winston-Salem State University, 601 North Martin Luther King Jr. Drive, Winston-Salem, NC 27110. Grant: $600,000.

6. Albany State University, Dr. Teresa M. Orok, Albany State University, 504 College Drive, Albany, GA 31705. Grant: $600,000.

7. Rust College, Christine Ratclift, Rust College, 150 East Rust Avenue, Holly Springs, MS 38635. Grant: $598,453.38

8. South Carolina State University, Ms. Merylin M. Jackson, South Carolina State University, 300 College Street, NE., Orangeburg, SC 29117. Grant: $600,000.

9. Clinton Junior College, Ms. Cheryl J. McCullough, Clinton Junior College, 1029 Crawford Road, Rock Hill, SC 29730. Grant: $400,000.

10. Stillman College, Dr. Eddie B. Thomas, Stillman College, 3706 Stillman Boulevard, P.O. Box 1430, Tuscaloosa, AL 35401. Grant: $600,000.

11. Voorhees College, Mr. William B. Owens, Voorhees College, P.O. Box 678, Denmark, SC 29042. Grant: $600,000.

12. Tennessee State University, Dr. Deena S. Fuller, Tennessee State University, 3500 John Merritt Blvd., Nashville, TN 37209. Grant: $600,000.

Region VI

13. Texas Southern University, Ms. Ella M. Nunn, Texas Southern University, 3100 Cleburne Avenue, Houston, TX 77004. Grant: $600,000.

Dated: September 22, 2005.

Harold Bunce,

Deputy Assistant Secretary for Economic Affairs.

[FR Doc. E5–5464 Filed 10–5–05; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4950–FA–13]

Announcement of Funding Awards for Fiscal Year 2005 Tribal Colleges and Universities Program

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102 (a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this document notifies the public of funding awards for Fiscal Year 2005 Tribal Colleges and Universities Program. The purpose of this document is to announce the names and addresses of the award winners and the amount of the awards which are to be used to enable tribal colleges and universities to build, expand, renovate, and equip their own facilities, especially those that are available to and used by the larger community.

FOR FURTHER INFORMATION CONTACT: Susan Brunson, Office of University Partnerships, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 8106, Washington, DC 20410, telephone (202) 708–3061, ext. 3852. To provide service for persons who are hearing-or-speech-impaired, this number may be reached via TTY by Dialing the Federal Information Relay Service on (800) 877–8339 or (202) 708–1455 (Telephone numbers, other than ''800'' TTY numbers are not toll free.)

SUPPLEMENTARY INFORMATION: The Tribal Colleges and Universities Program was enacted under section 107 of the CDBG appropriation for Fiscal Year 2005, as part of the ''Veterans Administration, HUD and Independent Agencies Appropriations Act of 2005'' and is administered by the Office of University Partnerships under the Office of the Assistant Secretary for Policy Development and Research. In addition to this program, the Office of University Partnerships administers HUD's ongoing grant programs to institutions of higher education as well as creates initiatives through which colleges and universities can bring their traditional missions of teaching, research, service, and outreach to bear on the pressing local problems in their communities.

The Tribal Colleges and Universities Program assist tribal colleges and universities to build, expand, renovate, and equip their own facilities.

The Catalog of Federal Domestic Assistance number for this program is 14.519.

On March 21, 2005 (FR 70, No 53, 13733), HUD published a Notice of Funding Availability (NOFA) announcing the availability of $2.9 million in Fiscal Year 2005 funds for the Tribal Colleges and Universities Program. The Department reviewed, evaluated and scored the applications received based on the criteria in the NOFA. As a result, HUD has funded the applications below, in accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, 42 U.S.C. 3545).

List of Awardees for Grant Assistance Under the FY 2005 Tribal Colleges and Universities Program Funding Competition, by Institution, Address, and Grant Amount

Region VIII

1. Fort Berthold Community College, Mr. Keith Smith, Fort Berthold Community College, 220 8th Avenue North, New Town, ND 58763. Grant: $520,770.
2. Sitting Bull College, Ms. Laurel Vermillion, 1341 92nd Street, Fort Yates, ND 58538. Grant: $600,000.
3. Fort Belknap College, Ms. Carole Falcon-Chandler, Fort Belknap College, PO Box 159, Highway 2 & Highway 66, Harlem, MT 59526. Grant: $600,000.
4. Salish Kootenai College, Mr. Michael O'Donnell, Salish Kootenai College, 52000 Highway 93 North, Pablo, MT 59855. Grant: $600,000.
5. Oglala Lakota College, Mr. Thomas Shortbull, Oglala Lakota College, 490 Piya Wiconi Road, Kyle, SD 57752. Grant: $600,000.

Dated: September 22, 2005.

Harold L. Bunce,

Deputy Assistant Secretary for Economic Affairs.

[FR Doc. E5–5465 Filed 10–5–05; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–260–09–1060–00–24 1A]

Call for Nominations for the Wild Horse and Burro Advisory Board

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Wild Horse and Burro Advisory Board Call for Nominations.

SUMMARY: The purpose of this notice is to solicit public nominations for three members to the Wild Horse and Burro Advisory Board. The Board provides advice concerning management, protection and control of wild free-roaming horses and burros on the public lands administered by the Department of the Interior, through the Bureau of Land Management, and the Department of Agriculture, through the Forest Service.

DATES: Nominations should be submitted to the address listed below no later than October 31, 2005.

ADDRESSES: National Wild Horse and Burro Program, Bureau of Land Management, Department of the Interior, P.O. Box 12000, Reno, Nevada 89520–0006, Attn: Ramona Delorme; fax 775–861–6618.

FOR FURTHER INFORMATION CONTACT: Jeff Rawson, Group Manager, Wild Horse and Burro Group, (202) 452–0379. Individuals who use a telecommunications device for the deaf (TDD) may contact Mr. Rawson at any time by calling the Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: Nominations for a term of three years are needed to represent the following categories of interest: Humane Advocacy; Livestock Management; Wildlife Management.

Any individual or organization may nominate one or more persons to serve on the Wild Horse and Burro Advisory Board. Individuals may also nominate themselves for Board membership. All nomination letters/or resumes should include the nominees: (1) Name, address, phone, and e-mail address if applicable; (2) category(s) for consideration (*i.e.* humane advocacy, livestock management or wildlife management); (3) present occupation; (4) explanation of qualifications to represent their designated constituency; (5) nominating organization, individual or by self; and (6) list of endorsements by qualified individuals.

As appropriate, certain Board members may be appointed as Special Government Employees. Special Government Employees serve on the board without compensation, and are subject to financial disclosure requirements in the Ethics in Government Act and 5 CFR 2634. Nominations are to be sent to the address listed under **ADDRESSES**, above.

Each nominee will be considered for selection according to their ability to represent their designated constituency, analyze and interpret data and information, evaluate programs, identify problems, work collaboratively in seeking solutions and formulate and recommend corrective actions. Pursuant to Section 7 of the Wild Free-Roaming Horses and Burros Act, Members of the Board cannot be employed by either

Federal or State Government. Members will serve without salary, but will be reimbursed for travel and per diem expenses at current rates for Government employees. The Board will meet no less than two times annually. The Director, Bureau of Land Management may call additional meetings in connection with special needs for advice.

Dated: September 6, 2005.

Thomas Dyer,

Acting Assistant Director, Renewable Resources and Planning.

[FR Doc. 05–20082 Filed 10–5–05; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–030–1310–DB]

Notice of Intent To Prepare an Environmental Impact Statement for the Creston/Blue Gap II Natural Gas Project, Carbon and Sweetwater Counties, WY

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of correction.

SUMMARY: The Bureau of Land Management (BLM) inadvertently published a draft version of a Notice of Intent to Prepare an Environmental Impact Statement for the Creston/Blue Gap II Natural Gas Project, Carbon and Sweetwater Counties, Wyoming in the **Federal Register** on Thursday, September 8, 2005 (70 FR 53381). The BLM is publishing this correction notice to strike the last sentence. The sentence being removed is ''A decision for the Creston/Blue Gap II Natural Gas Project (C/BG2 Project) will not be made nor implemented until after a Record of Decision is issued for the Rawlins RMP revision FEIS''. Any such decision will be in accordance with regulatory requirements.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, Eldon Allison, Project Manager, 1300 North Third Street, P.O. Box 2407, Rawlins, Wyoming 82301. Mr. Allison may also be reached by telephone at (307) 328–4291, or by sending an electronic message to: *Eldon_Allison@blm.gov*.

Deborah Rawhouser,

Group Manager, Planning Assessment and Community Support.

[FR Doc. 05–20084 Filed 10–5–05; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Conservation Helium Sale

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice implementing fourth conservation helium sale.

SUMMARY: The purpose of this action is to continue implementation of the terms of the Helium Privatization Act (HPA) of 1996 dealing with the disposal of the Conservation Helium Reserve. The HPA requires the Department of the Interior (DOI) to *offer for sale*, beginning no later than 2005, a portion of the Conservation Helium stored underground at the Cliffside Field, north of Amarillo, Texas. The DOI, in consultation with the private helium industry, has determined that private companies, with refining capacity along the crude helium pipeline, will need a supply of helium in excess of that available from their own storage accounts and that available from crude helium extractors in the region. Given the current market, Conservation Helium sold in this sale will cause minimal market disruption. This sale will be conducted in four parts, with one-fourth of the annual sale amount offered each quarter of Fiscal Year 2006.

DATES: Submit bids for the first quarter sale and other documentation as required in Notice on or before November 7, 2005. Bids for the remaining three quarters must be submitted according to the following schedule:

- Second Quarter—December 1, 2005, through December 31, 2005.
- Third Quarter—March 1, 2006, through March 31, 2006.
- Fourth Quarter—June 1, 2006, through June 30, 2006.

ADDRESSES: You may submit your bids and other documentation as required in this Notice to the BLM, Amarillo Field Office, 801 S. Fillmore, Suite 500, Amarillo, TX 79101–3545, Attention: Crude Helium Sales Analyst.

FOR FURTHER INFORMATION CONTACT: Connie H. Neely, (806) 356–1027.

Individuals who use a telecommunications device for the deaf may call the Federal Information Relay Service at 1–800–877–8339 between 8 a.m. and 8 p.m., eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

1.01 What Is the Purpose of the Sale?

The purpose of this sale is to continue implementation of the terms of the HPA of 1996 dealing with the disposal of the Conservation Helium Reserve. The HPA requires the DOI to *offer for sale*, beginning no later than 2005, a portion of the Conservation Helium stored underground at the Cliffside Field, north of Amarillo, Texas. The DOI, in consultation with the private helium industry, has determined that private companies, with refining capacity along the crude helium pipeline, will need a supply of helium in excess of that available from their own storage accounts and that available from crude helium extractors in the region. This is the fourth in a series of sales that the Department will conduct to dispose of the Conservation Helium stored underground at the Cliffside Field. The annual sales are being conducted in a manner intended to prevent pure helium market disruptions from occurring to end users; shortages of crude helium to pure helium refiners; and an oversupply of crude helium on the market for crude helium extractors. Subsequent sales may be adjusted as needed.

1.02 What Terms Do I Need To Know To Understand This Sale?

Allocated Sale—That portion of the annual sale volume of Conservation Helium that will be set aside for purchase by the Crude Helium Refiners.

Annual Conservation Helium Sale—The sale of a certain volume of Conservation Helium to private entities conducted annually beginning no later than 2005.

Bidder—Any entity or person who submits a request for purchase of a volume of the Annual Conservation Helium Sale and has met the qualifications contained in part 1.05 in this Notice.

BLM—The Bureau of Land Management.

Conservation Helium—The crude helium purchased by the U.S. Government under the authority of the Helium Act of 1960 and stored underground in the Cliffside Field.

Crude Helium—A partially refined gas containing about 70 percent helium and 30 percent nitrogen. However, the helium concentration may vary from 50 to 95 percent.

Crude Helium Refiners—Those entities with a capability of refining crude helium and having a connection point on the crude helium pipeline and a valid Helium Storage Contract as of the date of a Conservation Helium Sale.

Excess Volumes—Allocated sale volumes not requested by the Crude Helium Refiners.

Helium Storage Contract—A contract between the BLM and a private entity allowing the private entity to store crude helium in underground storage at the Cliffside Field.

HPA—The Helium Privatization Act of 1996.

In-Kind Crude Helium—Conservation Helium purchased by private refiners in exchange for like amounts of pure helium sold to Federal agencies and their contractors in accordance with the HPA.

MMcf—One million cubic feet of gas measured at standard conditions of 14.65 pounds per square inch (psi) and 60° F.

Mcf—One thousand cubic feet of gas measured at standard conditions of 14.65 psi and 60° F.

Non-Allocated Sale—That portion of the annual sale volume of Conservation Helium that will be offered to all qualified bidders.

1.03 What Volume of Conservation Helium Will Be Offered in the Fiscal Year 2006 Annual Conservation Helium Sale?

• The volume of helium available for this sale is 2,100 MMcf and will be offered in four equal quarterly increments of 525 MMcf. In accordance with the HPA, this volume was determined by dividing the total volume of stored Conservation Helium less the statutory required reservation of 600 MMcf for Government purposes less estimated In-Kind Crude Helium transfers for 12 years divided by 12. This volume represents a straight-line basis for offering the helium for sale in accordance with the HPA. Any helium not sold during the First, Second, or Third Quarter Sales will be carried over to the succeeding Quarter and reallocated according to the formula in Section 2.03. Any helium remaining unsold after the Fourth Quarter sale will be held in reserve for possible future sales.

1.04 At What Price Will the Conservation Helium Be Sold?

The Conservation Helium will be sold at the same price as In-Kind Crude Helium. In accordance with the HPA, this price covers helium debt repayment and its escalation by the Consumer Price Index since the helium debt was frozen in 1995. Additionally, the price includes administrative and storage costs associated with the Conservation Helium calculated on a per Mcf basis. For Fiscal Year 2006 that price is $56.50 per Mcf.

1.05 Am I Qualified to Purchase Conservation Helium at This Sale?

Any person, firm, partnership, joint stock association, corporation, or other domestic or foreign organization operating partially or wholly within the United States who meets one or more of the following requirements is qualified to submit a purchase request:

• Operates a helium purification plant within the U.S.; or

• Operates a crude helium extraction plant within the U.S.; or

• Is a wholesaler of pure helium or purchases helium for resale within the U.S.; or

• Is a consumer of pure helium within the U.S.; or

• Has an agreement with a helium refiner to provide its helium processing needs, commonly referred to as a ''tolling agreement.''

All entities requesting participation in the Non-Allocated Sale must submit proof of being qualified to purchase Conservation Helium and must either have a Helium Storage Contract with the BLM or have a third-party agreement in place with a valid storage contract holder so that all Conservation Helium sold to the bidder will be properly covered by a Helium Storage Contract (including associated storage charges).

1.06 When Will the Conservation Helium Be Offered for Sale?

The BLM, Amarillo Field Office, will accept requests for purchase of Conservation Helium for the First Quarter from final publication of this Notice until November 7, 2005. On the next business day after this Notice closes, requests to purchase Conservation Helium for the First Quarter will be opened and evaluated. Upon evaluation, volumes of this Conservation Helium Sale will be apportioned and allocated according to the Sale rules described in this Notice. Bids for the remaining three quarters must be submitted according to the following schedule:

• Second Quarter—December 1, 2005, through December 31, 2005.

• Third Quarter—March 1, 2006, through March 31, 2006.

• Fourth Quarter—June 1, 2006, through June 30, 2006.

On the next business day after close of each quarterly Sale, requests to purchase Conservation Helium for each Quarter will be opened and evaluated. Upon evaluation, volumes of this Conservation Helium Sale will be apportioned and allocated according to the Sale rules described in this Notice.

1.07 What Must I Do To Submit a Request for Purchase?

You must submit the following information to the BLM, Amarillo Field Office:

• Billing address information and name(s) of principle officers of the company.

• Proof of being an entity qualified to purchase Conservation Helium at this sale as defined in part 1.05 above. Documents such as invoices for sale or purchase of helium, Helium Storage Contracts, or other relevant documents may be submitted as proof of qualification.

• The amount (in Mcf) of Conservation Helium requested.

• Certified check or money order in the amount of $1,000 made payable to the BLM. This money will be used to cover administrative expenses to conduct this sale and is nonrefundable.

• The above information and nonrefundable $1,000 fee only needs to be submitted the first time a prospective purchaser submits a bid.

Prospective purchasers are not required to submit bids every quarter and may participate in only the quarterly sales they deem appropriate.

1.08 Where Do I Send My Request for Purchase?

All requests for purchase of helium, as part of this Sale, must be sent by certified mail to: Bureau of Land Management, Amarillo Field Office, 801 S. Fillmore, Suite 500, Amarillo, TX 79101–3545, Attention: Crude Helium Sales Analyst.

1.09 When Do I Need To Submit Payment for Any Conservation Helium Sold to Me?

Successful purchasers will submit payments according to the following schedule:

• First Quarter request by October 30, 2005, or 30 days after notification of the award volumes, whichever is later.

• Second Quarter Request by February 6, 2006.

• Third Quarter Request by May 8, 2006.

• Fourth Quarter Request by August 7, 2006.

Conservation Helium will not be transferred to the purchaser's storage account until payment is received for that portion.

1.10 To Whom Do I Make Payments for Awarded Conservation Helium Volumes?

Make checks payable to the BLM at the address listed in part 1.08 in this Notice.

1.11 What Are the Penalties for Not Paying for the Conservation Helium in a Timely Manner?

If BLM does not receive payment for a Quarterly Sale by the due dates in Section 1.09, the purchaser will forfeit its quarterly purchase unless the purchaser can show that payment was late through no fault of its own. However, penalty interest will be

assessed in accordance with the Debt Collection Act of 1982, 31 U.S.C. 951–953.

1.12 How Will I Know if I Have Been Successful in My Purchase Request?

Successful purchasers will be notified in writing by BLM no later than 1 week after the bid opening for each Quarter of the awarded volumes and payment schedule.

Allocated Sale

2.01 What Is the Allocated Sale?

That portion of the annual sale volume of Conservation Helium that will be set aside for purchase by the Crude Helium Refiners.

2.02 Who Will Be Allowed to Purchase Conservation Helium in the Allocated Sale?

Only those who meet the definition of Crude Helium Refiners as defined in part 1.02 in this Notice.

2.03 What Volume of Conservation Helium Is Available in the Allocated Sale?

The amount available will be 90 percent of the total volume of the Annual Conservation Helium Sale—1,890 MMcf, or 472,500 Mcf per quarter

2.04 How Will the Conservation Helium Be Apportioned Among the Refiners?

The apportionment to each Crude Helium Refiner will be based on its percentage share (rounded to the nearest 1/10 of 1 percent) of the total refining capacity as of October 1, 2000, connected to the BLM crude helium pipeline.

2.05 What Will Happen if a Refiner or Refiners Request an Amount Other Than Their Share of What Is Offered for Sale?

- If one or more refiners request less than their allocated share, any other refiner(s) that requested more than their share will be allowed to purchase the excess volume based on proportionate shares of remaining refining capacities.
- Requests by the Crude Helium Refiners that are in excess of the amount available above will be carried over to the Non-Allocated Sale and considered a separate bid under the Non-Allocated Sale rules.

2.06 What Will Happen if the Total Amount Requested by the Crude Helium Refiners Is Less Than the 472,500 Mcf Offered in the Quarterly Allocated Sale?

Any excess volume not sold to the Crude Helium Refiners will be added to the Non-Allocated Sale volume.

2.07 Do You Have a Hypothetical Example of How an Allocated Sale Would Be Conducted?

525,000 Mcf available for total sale with 90 percent available for Allocated Sale (472,500 Mcf).

Bidder—allocated sale	Installed refining capacity	Refiner bid volume*	Allocated volume*	Excess volume requested*	Proration percent	Excess allocated*	Total allocated*	Carryover to non-allocated sale*
Refiner A	10%	56,250	47,250	9,000	20%	9,000	56,250	0
Refiner B	50%	187,500	187,500	0	0%	0	187,500	0
Refiner C	40%	246,250	189,000	57,250	80%	39,750	228,750	17,500
Total	100%	490,000	423,750	66,250	100%	48,750	472,500	0

*All volumes in Mcf.

After the initial allocation, Refiner B has received all requested. However, 66,250 Mcf is deemed excess of the total in the first iteration of the Allocated Sale and reallocated to the two remaining refiners based on the refining capacity between them. With the reallocation, Refiner A gets all requested, but Refiner C is still short by 18,250 Mcf. Additionally, 750 Mcf remains unallocated and without any other Refiners is awarded to Refiner C, who now has a remaining request of 17,500 Mcf that is posted into the Non-Allocated Sale. All percentages used in the calculation will be rounded to the nearest 1/10 of 1 percent. All volumes calculated will be rounded to the nearest 1 Mcf.

Non-Allocated Sale

3.01 What Is the Non-Allocated Sale?

That portion of the annual sale volume of Conservation Helium that will be offered to all qualified bidders.

3.02 What Is the Minimum Volume I Can Request?

The minimum request is 5 MMcf.

3.03 What Volume of Conservation Helium Is Available for the Non-Allocated Sale?

The total volume of Conservation Helium available for the non-allocated portion of the quarterly Sale is 52,500 Mcf per quarter plus any additional helium that is not sold as part of the Allocated Sale and helium carried-over from previous quarters as described in Sec 1.03.

3.04 How Is the Ratio of Allocated to Non-Allocated Sale Volumes Determined?

According to the terms of the HPA, the BLM must conduct the Annual Conservation Helium Sales in a manner not to cause undue helium market disruptions; and therefore, the majority of the Conservation Helium is being offered as part of the Allocated Sale. Currently, *the Crude Helium Refiners have refining capacity roughly double what can be supplied* through the Annual Conservation Helium Sales. Although there are other crude helium supplies available to the Crude Helium Refiners, these supplies are declining each year. The BLM must be sensitive to the Crude Helium Refiners requirements while maintaining a balance with other helium industry requirements. The exact ratio of Allocated to Non-Allocated Sale volumes may change for subsequent Annual Conservation Helium Sales.

3.05 How Will the Non-Allocated Conservation Helium Be Apportioned Among the Bidders?

The Conservation Helium will be apportioned equally in 1 Mcf increments among the bidders with no prospective bidder receiving more than its request.

3.06 What Will Happen if the Bidders Request More Than What Is Made Available for Sale in Part 3.03 of this Notice?

- If one or more bidders request less than their apportioned amount, any other bidder(s) that requested more than its apportioned amount will be allowed to purchase equally apportioned amounts of the remaining volume available for this sale.
- If all bidders request more than their apportioned amount, each bidder will receive its apportioned amount as determined in part 3.05 in this Notice.

3.07 What Will Happen if a Bidder Requests Less Than Its Apportioned Amount?

Any bidder requesting less than the calculated apportioned volume will receive the amount of its request and amounts remaining will be reapportioned in accordance with part 3.05 in this Notice.

3.08 Do You Have a Hypothetical Example of How a Non-Allocated Sale Would Be Conducted?

525 MMcf available for total sale with 10 percent available for Non-Allocated Sale (52,500 Mcf).

Bidder—non-allocated sale	Bid volume*	Appointed volume*	Excess volume requested*	Proration percent	Excess apportioned*	Total apportioned*	Amount requested not received*
Refiner C	17,500	13,125	4,375	50%	3,750	16,875	625
Company D	25,000	13,125	11,875	50%	3,750	16,875	8,125
Company E	12,500	12,500	0	0%	0	12,500	0
Company F	6,250	6,250	0	0%	0	6,250	0
Total	61,250	45,000	16,250	100%	7,500	52,500	8,750

*All volumes in MMcf.

In this example, three companies submit a request and there is a carryover amount from one of the Crude Helium Refiners in the Allocated Sale that is considered as a separate request. Each bidder would be apportioned 13,125 Mcf, (*i.e.*, 52,500 Mcf of Non-Allocated Conservation Helium 4 ÷bidders = 13,250 Mcf per bidder).

After the initial allocation, Companies E and F have received all the helium they requested. However, 7,500 Mcf is deemed excess in the first iteration of the Non-Allocated Sale and reallocated to the two remaining bidders. With the reallocation, Refiner C and Company D each receives an additional 3,750 Mcf. No more helium is available, Refiner C and Company D do not receive all that they requested, and the sale is complete. All percentages used in the calculation will be rounded to the nearest 1/10M of 1 percent. All volumes calculated will be rounded to the nearest 1 Mcf.

Linda S.C. Rundell,

State Director, New Mexico.

[FR Doc. 05–20083 Filed 10–5–05; 8:45 am]

BILLING CODE 9971–EK–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[IDI–27239 and IDI–32131]

Notice of Realty Action; Non-Competitive Sale of Public Land, Custer County, ID

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: The Bureau of Land Management (BLM) has examined and determined that two parcels of public land, 5.0 acres and 3.09 acres located in Custer County, Idaho to be suitable for disposal by direct (non-competitive) sale to Wayne and Melodie Baker pursuant to Sections 203 and 209 of the Federal Land Policy and Management Act of 1976, as amended, at no less than the appraised fair market value.

DATES: Interested parties may submit comments to the BLM Challis Field Office Manager, at the below address. Comments must be received by not later than November 21, 2005. Only written comments will be accepted.

ADDRESSES: Address all written comments concerning this Notice to David Rosenkrance, BLM Challis Field Manager, 801 Blue Mountain Road, Challis, Idaho 83226–9304.

FOR FURTHER INFORMATION CONTACT: Gloria Jakovac, Realty Specialist, at the above address or (208) 756–5421.

SUPPLEMENTARY INFORMATION: The following described public land in Custer County, Idaho has been determined to be suitable for sale at not less than fair market value under sections 203 and 209 of the Federal Land Policy and Management Act of 1976, as amended (90 Stat. 2750, 43 U.S.C. 1713 and 1719). It has been determined that this land is difficult to economically manage as part of the public lands. It has been determined that resource values will not be affected by the disposal of these two parcels of public land. Both parcels are identified for disposal in the Challis Resource Management Plan (1999). In accordance with 43 CFR 2711.3–3(a)(5), these two parcels are being offered by direct (non-competitive) sale to Wayne and Melodie Baker of Clayton, Idaho, based on the need to resolve inadvertent unauthorized historic use and occupancy and the value of added improvements. One of the parcels of public land has been fenced in with the private land for many years and used for livestock grazing and hay production. The second parcel of public land has been used for many years as a homesite for hired help, storage area for equipment, and contains a root cellar and storage shed. Failure or refusal by Wayne and Melodie Baker to submit the required fair market appraisal amount within 180 days of the sale of the land will constitute a waiver of this preference consideration and this land may be offered for sale on a competitive or modified competitive basis.

The parcels are described as follows:

Boise Meridian, Idaho

T. 10 N., R. 18 E.,
Section 32, SW¼SW¼NW¼SE¼, SE¼SE¼NE¼SW¼.

The area described (IDI–27239) contains 5.0 acres, more or less. The fair market value for this land utilizing direct sales procedures, at not less than the current appraised fair market value, is determined to be $9,600.00.

The patent, when issued, will contain a reservation to the United States for ditches and canals under the Act of March 30, 1890. The patent, when issued, will be made subject to the following existing rights of record:

1. IDI–08406—Those rights for a public trail granted to the United States Forest Service, its successors or assigns, pursuant to the Act of October 21, 1976 (43 U.S.C. 1761).

2. IDI–33923—Those rights for a telephone right-of-way granted to Custer Telephone Cooperative Incorporated, its successors or assigns, pursuant to the Act of October 21, 1976 (43 U.S.C 1761).

3. IDI–20147—Those rights held by Custer County, its successors or assigns, for an existing road exercised under RS2477 and noted under BLM Serial Number IDI–20147.

Boise Meridian, Idaho

T. 11 N., R. 18 E.,
Section 35, lot 5 (NE¼SE¼SW¼).

The area described (IDI–32131) contains 3.09 acres, more or less. The fair market value for this land utilizing direct sales procedures, at not less than the current appraised fair market value is determined to be $5,000.00.

The patent, when issued, will contain a reservation to the United States for ditches and canals under the Act of March 30, 1890. The patent, when issued, will be made subject to the following existing rights of record:

1. IDI–20147—Those rights held by Custer County, its successors or assigns, for an existing road exercised under RS2477 and noted under BLM Serial Number IDI–20147.

2. IDI–16925—Those rights for a telephone line granted to Custer Telephone Cooperative, Inc., its successors or assigns, pursuant to the Act of October 21, 1976 (43 U.S.C. 1761).

Continued use of the land by valid right-of-way holders is proper subject to the terms and conditions of the grant. Administrative responsibility previously held by the United States will be assumed by the patentee.

It has been determined that the subject parcels contain no known mineral values; therefore, mineral interests will be conveyed simultaneously. A separate non-refundable filing fee of $100.00 total for both parcels is required from the purchasers for conveyance of the mineral interests.

Upon publication of this notice in the **Federal Register**, the land described above will be segregated from appropriation under the public land laws, including the general mining laws. The segregation will end upon issuance of patent or 270 days from the date of publication, whichever occurs first.

The land will not be offered for sale until at least 60 days after the date of publication of this notice in the **Federal Register**.

Comments must be received by the BLM Challis Field Manager, Idaho Falls District Office, at the address stated above, on or before the date stated above. Any adverse comments will be reviewed by the Idaho Falls District Manager, who may sustain, vacate or modify this realty action. In the absence of any objects, or adverse comments, this proposed realty action will become the final determination of the Department of the Interior.

Authority: 43 CFR 2711.1–2(c))

Joe J. Kraayenbrink,

District Manager, Idaho Falls District.

[FR Doc. 05–20080 Filed 10–5–05; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–030–1430–EU; NMNM 104125]

Recreation and Public Purposes Act Classification; Dona Ana County, NM

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: The Bureau of Land Management (BLM) has examined and found suitable for classification for lease or conveyance under the provisions of the Recreation and Public Purposes (R&PP) Act approximately 40.1 acres of public land in Dona Ana County, New Mexico. Dona Ana County proposes to use the land for a sports park and related facilities.

DATES: Comments must be received by not later than November 21, 2005.

ADDRESSES: Comments should be sent to the BLM, Las Cruces District Office, 1800 Marquess, Las Cruces, New Mexico 88005.

FOR FURTHER INFORMATION CONTACT: Lorraine Salas, Realty Specialist at the above address or by telephone at (505) 525–4388.

SUPPLEMENTARY INFORMATION: The following described public land in Dona Ana County, New Mexico has been examined and found suitable for classification for lease or conveyance under the provisions of the R&PP Act; as amended (43 U.S.C. 869 *et seq.*) and is hereby classified accordingly:

New Mexico Principal Meridian

T. 22 S., R. 3 E., NMPM

Sec. 7, NE¼SE¼

Containing 40.132 acres, more or less.

In accordance with the R&PP Act, Dona Ana County has filed an application and plan of development in which it is proposed to use the above described public land as a sports park and related facilities, devoted to community recreational pursuits. The land is not needed for Federal purposes. Lease or conveyance pursuant to the R&PP Act is consistent with the Mimbres Resource Management Plan dated December 1993 and would be in the public interest.

The lease or conveyance, when issued, will be subject to the following terms, conditions, and reservations.

1. Provisions of the R&PP Act and to all applicable regulations, including, but not limited to, the regulations stated at 43 CFR part 2740.

2. All valid existing rights of record, including those documented on the official public land records at the time of lease/patent issuance.

3. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals under applicable laws and regulations established by the Secretary of the Interior.

4. Any other terms or reservations that the authorized officer determines appropriate to ensure public access and proper management of Federal lands and interests therein.

Detailed information concerning the proposed action, including but not limited to documentation relating to compliance with applicable environmental and cultural resource laws, is available for review at the BLM Las Cruces District Office, 1800 Marquess, Las Cruces, New Mexico 88005, telephone: (505) 525–4338. On October 6, 2005, the above described land will be segregated from all forms of appropriation under the public land laws, including the general mining laws, except for lease or conveyance under the R&PP Act and leasing under the mineral leasing laws. Interested persons may submit comments regarding the proposed lease/conveyance or classification of the land to the Manager of the BLM Las Cruces District Office at the address stated above in this notice for that purpose. Comments must be received by not later than November 21, 2005.

Classification Comments

Interested parties may submit comments involving the suitability of the land for a sports park and related facilities devoted to community recreational pursuits. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Application Comments

Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for community recreation facilities.

Any adverse comments will be reviewed by the BLM New Mexico State Director. In the absence of any adverse comments, the classification will become effective on December 5, 2005. (Authority: 43 CFR 2741.5).

Dated: September 19, 2005.

Edwin L. Roberson,

District Manager, Las Cruces.

[FR Doc. 05–20086 Filed 10–5–05; 8:45 am]

BILLING CODE 4310–VC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–300–1330–EO]

Notice of a 120-Day Public Comment Period To Affirm the Policy for the Standards To Establish the Potash Enclave as Used To Administer the Secretarial Order of 1986 Entitled ''Oil and Gas and Potash Leasing and Development Within the Designated Potash Area of Eddy and Lea Counties, New Mexico''

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management (BLM) originally published this notice on Tuesday, August 30, 2005 [70 FR 51364] and solicited public comments on the report which affirms the existing policy on the criteria used to establish the potash enclave. The BLM gave the public 30 days to comment on these Policy Standards. The public comment period ended on Thursday, September 29, 2005. The BLM received numerous requests to lengthen the comment period. The BLM will re-issue a comment period for 120 days.

DATES: Comments should be submitted to the address below no later than February 3, 2006.

ADDRESSES: Written comments should be addressed to Group Manager, Solid Minerals, 1620 L, Street, NW., Mail Stop 501 LS, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Charlie Beecham, Mining Engineer, 1620 L, St., NW., Mail Stop 501 LS, Washington, DC 20036, telephone (202) 785–6570.

Thomas Lonnie,

Assistant Director, Minerals, Realty and Resource Protection.

[FR Doc. 05–20087 Filed 10–5–05; 8:45 am]

BILLING CODE 4310–FB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES–960–1420–BJ–TRST] ES–053597, Group No. 161, Wisconsin

Eastern States: Filing of Plat of Survey

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Filing of Plat of Survey; Wisconsin.

SUMMARY: The Bureau of Land Management (BLM) will file the plat of survey of the lands described below in the BLM-Eastern States, Springfield, Virginia, 30 calendar days from the date of publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 7450 Boston Boulevard, Springfield, Virginia 22153. Attn: Cadastral Survey.

SUPPLEMENTARY INFORMATION: This survey was requested by the Bureau of Indian Affairs.

The lands we surveyed are:

Fourth Principal Meridian, Wisconsin

T. 40 N., R. 6 W.

The plat of survey represents the dependent resurvey of the Fourth Standard Parallel North in Range 6 West, a portion of the Fourth Standard Parallel North in Range 7 West, a portion of the south and west boundaries, a portion of the subdivisional lines; and the subdivision of certain sections, the reestablishment of a portion of the record meander line and a survey of a portion of the present shore line of James Lake, and the apportionment of the shore line frontage to the original lots 2 and 3 in section 20, Township 40 North, Range 6 West, Fourth Principal Meridian, Wisconsin, and was accepted September 29, 2005. We will place a copy of the plat we described in the open files. It will be available to the public as a matter of information.

If BLM receives a protest against this survey, as shown on the plat, prior to the date of the official filing, we will stay the filing pending our consideration of the protest. We will not officially file the plat until the day after we have accepted or dismissed all protests and they have become final, including decisions on appeals.

Dated: September 29, 2005.

Stephen D. Douglas,

Chief Cadastral Surveyor.

[FR Doc. 05–20052 Filed 10–5–05; 8:45 am]

BILLING CODE 4310–GJ–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Safety Modifications for Folsom Dam and Appurtenant Structures (Folsom Safety of Dams Project)— Sacramento, El Dorado, and Placer Counties, CA

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of intent to prepare an Environmental Impact Statement (EIS) and notice of public scoping meetings.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), the Bureau of Reclamation (Reclamation) intends to prepare an EIS for the implementation of the safety modifications for Folsom Dam and Appurtenant Structures (Folsom Safety of Dams Project). Reclamation seeks to improve public safety by modifying Folsom Facilities and its appurtenant structures (Folsom Facilities) to mitigate issues identified in previous and ongoing safety evaluations. Studies are being conducted by Reclamation to identify alternatives (modifications) to address these conditions.

Engineering, Economic, and Environmental studies are being conducted to help determine reasonable design alternatives. Information gathered from the EIS process will be used in conjunction with engineering and economic principles to determine preferred alternatives.

DATES: Reclamation will seek public input on alternatives, concerns, and issues to be addressed in the EIS through scoping meetings on Tuesday, November 1 and Thursday, November 3, 2005, from 6:30 to 9 p.m. in Folsom, California.

ADDRESSES: The public scoping meetings will be held at the Folsom Community Center, 52 Natoma Street in Folsom, California 95630.

Send written comments on the scope of alternatives and impacts to be considered to Mr. Shawn Oliver at the address below, no later than 2 weeks after the second scheduled public scoping meeting.

FOR FURTHER INFORMATION CONTACT: Mr. Shawn Oliver, Bureau of Reclamation, 7794 Folsom Dam Road, Folsom, California 95630; telephone number (916) 989–7256; e-mail *soliver@mp.usbr.gov.*

SUPPLEMENTARY INFORMATION: Reclamation seeks to mitigate potential safety issues identified in previous and ongoing studies for the Folsom Dam complex, including Main Folsom Dam,

the two wing dams, Mormon Island Auxiliary Dam, and the eight dikes. Retrofitting and increasing the flood control capacity of the Folsom Dam and its appurtenant structures are currently being studied. Locating and extracting adequate borrow materials for embankment modifications will be a major component of the project. Reclamation has determined that an EIS is warranted to examine the potential impacts for implementation of the Folsom CAS Project on the natural and human environment.

Potential Modification Alternatives to the Folsom Dam and appurtenant structures are being identified to reduce risks associated with:

1. Major Flood Events
2. Earthquakes
3. Seepage and Piping through Embankments

Folsom Dam and Embankment Hydrologic Alternatives include, but are not limited to:

1. Embankment Raise Options
2. Auxiliary Spillway on the Left Abutment Options

Folsom Dam and Embankment Seismic and Static Alternatives include, but are not limited to:

1. Mormon Island Auxiliary Dam Seismic Alternatives
2. Concrete Dam Seismic Options
3. Folsom Dam and Embankment Static Alternatives

If special assistance is required at the scoping meetings, please contact Mr. Shawn Oliver, Bureau of Reclamation, at (916) 989–7256. Please notify Mr. Oliver as far in advance of the meetings as possible to enable Reclamation to secure the needed services. If a request cannot be honored, the requestor will be notified.

Reclamation's policy is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their name and/or home address from public disclosure, which Reclamation will honor to the extent allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. Reclamation will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public disclosure in their entirety.

Dated: August 25, 2005.

Michael Nepstad,

Deputy Regional Environmental Officer, Mid-Pacific Region.

[FR Doc. 05–20051 Filed 10–5–05; 8:45 am]

BILLING CODE 4310–MW–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that on September 19, 2005, a proposed Consent Decree (''Consent Decree'') in *United States* v. *Eliskim, Inc. et al.,* Civil Action No. 1:05CV2196 was lodged with the United States District Court for the Northern District of Ohio, Eastern Division.

In this action, the United States, on behalf of the United States Environmental Protection Agency (''EPA''), sought to recover response costs from Eliskim, Inc. (''Eliskim'') and the City of Geneva, Ohio (''City'') pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), 42 U.S.C. 107. The response costs were incurred in response to releases and threatened releases of hazardous substances from the True Temper Sports Superfund Site located in the City of Geneva, Ohio (the ''Site''). The Consent Decree would require Eliskim and the City to pay respectively $56,500 and $12,500 toward the response costs incurred by EPA, which are presently estimated to be $118,000. The Consent Decree would resolve Eliskim's liability for: (1) Past response costs at the Site; and (2) costs, penalties, and fees pursuant to an Administrative Order by Consent at the Site. To the extent provided by the Consent Decree, certain specified benefits of the settlement would also extend to Eliskim's parent corporation, American Household, Inc. Finally, the Consent Decree would grant the City a *de minimis* covenant not to sue pursuant to Section 122(g) of CERCLA, 42 U.S.C. 9622(g).

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Eliskim, Inc., et al.,* No. 1:05CV2196 (N.D. Ohio), D.J. Ref. 90–11–2–1310/1.

The Consent Decree may be examined at the Office of the United States Attorney, 801 West Superior Avenue, Suite 400, Cleveland, Ohio 44113–1852, and at U.S. EPA Region 5, 77 West Jackson Boulevard, 14th Floor, Chicago, Illinois. During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html*. A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $17.25 (25 cents per page reproduction cost) payable to the U.S. Treasury.

William D. Brighton,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 05–20041 Filed 10–5–05; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Amended Notice of Lodging of Settlement Agreement Pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act and the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with 28 CFR 50.7 and 42 U.S.C. 9622(i), notice is hereby given that on September 13, 2005, a Settlement Agreement was lodged with the United States District Court for the District of Puerto Rico in *United States* v. *Tropical Fruit, S.E., et al.,* Civil Action No. 97–1442–DRD. On October 25, 2001, the Court entered a Consent Decree between the United States, on behalf of the U.S. Environmental Protection Agency (''EPA''), and Defendants pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (''FIFRA''), 7 U.S.C. 136 *et seq.*, and the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), 42 U.S.C. 9601 *et seq.*, with respect to a Farm located in Rural Zone Boca, Guayanilla, Puerto Rico. The Consent Decree required Defendants to pay $35,000 in penalties and CERCLA response costs and to comply with extensive injunctive relief measures, including the creation of a no-spray buffer zone on the northern and a portion of the western perimeter of the Farm which will vary in width up to 173 feet. In December 2004, the United States filed a Motion to Enforce the Consent Decree and for stipulated penalties in that the United States alleged that Defendants violated certain provisions of the Consent Decree

including the requirement that Defendants remove or relocate mango trees and banana trees from the buffer zone area, and replace them with plaintain trees which would not be sprayed.

The United States and Defendants have reached a proposed agreement to resolve the United States' Motion to Enforce the Consent Decree and its request for stipulated penalties, which Settlement Agreement requires Defendants, *inter alia,* to remove or relocate the mango trees they were required to remove or relocate under the Decree by April 1, 2006, which schedule will allow Defendants to transplant the mango trees elsewhere at the Farm, and to replace them with bananas or plaintains. The Settlement Agreement authorizes the Farm to plant, in two perimeter areas, an extra row of neem trees as a barrier instead of planting bananas or plaintains. The Settlement Agreement allows Defendants to apply low-toxicity pesticides in limited circumstances and under application restrictions in buffer zone areas to address an outbreak of Sigatoka Negra. The Settlement Agreement also requires the Farm to pay a stipulated penalty of $50,000 over a one year period, plus interest.

The Department of Justice will receive, for a period of fifteen (15) days from the date of this publication, written comments relating to the proposed Settlement Agreement. Comments should be addressed to the Assistant Attorney General, Environmental and Natural Resources Division, Post Office Box 7611, United States Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Tropical Fruit, S.E., et al.,* DOJ Ref. #90–1–1700/1. The United States published notice of the proposed Settlement Agreement on September 22, 2005 (70 Fed. Reg. 55627), but did not specify that the comment period was for a period of 15 days.

The proposed Settlement Agreement may be examined at the office of the United States Attorney, Federal Building 452, Carlos Chardon Avenue, Hato Rey, PR 00918, and at two offices of the Environmental Protection Agency, Region II: EPA, 290 Broadway, 17th floor, New York, NY 10007–1866 or EPA, Carribean Environmental Protection Division, Centro Europa Building, Suite 417, 1492 Ponce de Leon, Stop 22, Santurce, Puerto Rico, 00907–4127. During the public comment period, the Settlement Agreement may also be examined on the following Department of Justice Website, *http://www.usdoj.gov/enrd/open.html.* A copy of the proposed Settlement Agreement may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC. 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov),* fax no. (202) 514–0097, phone confirmation no. (202) 514–1547, referencing DOJ No. 1–1700/1. For a copy of the proposed Settlement Agreement including the signature pages and attachments, please enclose a check (there is a 25 cent per page reproduction cost) in the amount of $3.50 payable to the U.S. Treasury.

Ronald G. Gluck,

Assistant Chief, Environmental Enforcement Section, Environment & Natural Resources Division.

[FR Doc. 05–20142 Filed 10–5–05; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Air Act and Clean Water Act

Pursuant to 28 CFR 50.7, notice is hereby given that on September 21, 2005, a proposed Consent Decree in *United States* v. *United States Steel Corp.,* C.A. No 1:05CV2220 was lodged with the United States District Court for the Northern District of Ohio.

In this action, the United States seeks civil penalties and injunctive relief against United States Steel Corp. (''U.S. Steel''), as a successor to certain liabilities of USS/KOBE Steel Company, for violation of the Clean Air Act, 42 U.S.C. 7401 *et seq.,* and provisions of the Ohio State Implementation Plan governing the emission of fugitive dust or particulate matter, and for violation of the Clean Water Act, 33 U.S.C. 1251 *et seq.,* and a National Pollutant Discharge Elimination System (''NPDES'') permit. The alleged violations occurred at a steel manufacturing facility located in Lorain, Ohio. The State of Ohio seeks to intervene in the action as a plaintiff asserting similar claims for relief.

The proposed Consent Decree requires U.S. Steel: (i) To comply with particulate emission limits in a permit issued by the Ohio Environmental Protection Agency pursuant to Title V of the Clean Air Act, (ii) to perform a stack test to verify compliance with applicable particulate emission limits; (iii) to comply with effluent limits in the NPDES permit applicable to the Lorain facility of United States Steel Corp., (iv) to pay a civil penalty of $100,025, divided evenly between the United States and the State of Ohio, and (v) to perform a Supplemental Environmental Project involving the removal from service and disposal of up to 13 transformers containing polychlorinated biphenyls, at a cost not to exceed $294,500.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, P.O. Box 7611, Washington, DC 20044–7611; and refer to *United States* v. *United States Steel Corp.,* DOJ Ref.#90–5–2–1–06709.

The proposed settlement agreement may be examined at the United States Environmental Protection Agency (Region 5), 77 West Jackson Blvd., Chicago, IL 60604–3507 (contact: Christine Liszewski (312–886–4670)). During the comment period, the Consent Decree may also be examined on the following Department of Justice website, *http://www.usdoj.gov/enrd/open.html.*

A copy of the proposed Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy of the proposed Consent Decree from the Consent Decree Library, please enclose a check in the amount of $9.75 (25 cents per page reproduction cost for 39 pages) payable to the U.S. Treasury for a copy of the Consent Decree without attachments. For a copy of the Consent Decree with attachments, please enclose $35.00 (25 cents per page reproduction cost for 140 pages).

William D. Brighton,

Assistant Section Chief, Environmental Enforcement Section.

[FR Doc. 05–20040 Filed 10–5–05; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of a Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, the Clean Water Act, and the Park System Resources Protection Act

Notice is hereby given that a proposed Consent Decree in *United States of America* v. *Washington Golf and*

Country Club, Case No. 1:05cv1112 (JCC/LO), was lodged on September 26, 2005, with the United States District Court for the Eastern District of Virginia (Alexandria Division).

In the complaint filed in this matter, the United States alleges claims for natural resource damages under Section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), 42 U.S.C. 9607(a)(4)(C), and Section 311(b)(3), (f)(2), (f)(4), and (f)(5) of the Clean Water Act (''CWA''), 33 U.S.C. 1321(b)(3), (f)(2), (f)(4), and (f)(5), and for damages to park system resources under the Park System Resources Protection Act (''PSRPA''), 16 U.S.C. 19jj–1(a), against Washington Golf and Country Club (''WGCC''), a private golf club located in Arlington, Virginia, arising from a release of hazardous substances from WGCC's property on August 23–24, 2001. The proposed Consent Decree would resolve the United States' claims set forth in the complaint through WGCC's performance of specific stream habitat enhancement activities and payment of $145,000 in reimbursement of the United States' costs, payment for lost use of resources, and payment of projected future monitoring costs.

The Department of Justice will receive comments relating to the proposed Consent Decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Acting Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044, and should refer to *United States* v. *Washington Golf and Country Club*, DJ No. 90–11–2–08028.

The proposed Consent Decree may be examined at the office of the United States Attorney for the Eastern District of Virginia, 2100 Jamieson Avenue, Alexandria, VA, 22314, and at the United States Department of the Interior, Office of the Solicitor, 1829 C Street, NW., Washington, DC 20240. During the public comment period, the decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html.* A copy of the decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $10.25 (25 cents per page reproduction cost) payable to the U.S. Treasury. The check should refer to *United States* v. *Washington Golf and Country Club,* DJ No. 90–11–2–08028.

Robert D. Brook,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 05–20039 Filed 10–5–05; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Alavita Callida Genomics

Notice is hereby given that, on August 23, 2005, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Alavita/Callida Genomics (''Alavita/Callida'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to the venture and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to Section 6(b) of the Act, the identities of the parties to the venture are: Alavita, Inc., Mountain View, CA; and Callida Genomics, Inc., Sunnyvale, CA. The general area of Alavita/Callida's planned activity is to develop and demonstrate nanoscale barcodes for genome-wide SNP scoring.

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 05–20137 Filed 10–5–05; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Mobile Enterprise Alliance, Inc.

Notice is hereby given that, on September 9, 2005, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Mobile Enterprise Alliance, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed or the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Sprint Nextel Corporation, Shawnee Mission, KS has been added as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Mobile Enterprise Alliance, Inc. intends to file additional written notification disclosing all changes in membership.

On June 24, 2004, Mobile Enterprise Alliance, Inc. field its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on July 23, 2004 (69 FR 44062).

The last notification was filed with the Department on June 13, 2005. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on July 7, 2005 (70 FR 39338).

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 05–20139 Filed 10–5–05; 8:45 am]

BILLING CODE 4418–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Motion Picture Laboratories, Inc.

Notice is hereby given that, on September 8, 2005, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Motion Picture Laboratories, Inc. (''MovieLabs'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to the venture and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to Section 6(b) of the Act, the identities of the parties to the venture are: Twentieth Century Fox Film Corporation, Los Angeles, CA; Paramount Pictures Corporation, Los Angeles, CA; Walt Disney Pictures & Television, Burbank, CA; Warner Bros.

Entertainment Inc., Burbank, CA; Universal City Studies LLLP, Universal City, CA; and Sony Pictures Entertainment Inc., Culver City, CA. The general area of MovieLabs' planned activity is identifying, researching, developing, evaluating, owning and disseminating technology (i) relevant to motion picture production and distribution and (ii) that lawfully prevents, deters or detects unauthorized and illegal copying and/or distribution of copyrighted audiovisual works.

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 05–20131 Filed 10–5–05; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Semiconductor Test Consortium, Inc.

Notice is hereby given that, on September 8, 2005, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Semiconductor Test Consortium, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Alliance ATE Consulting Group, Inc., Sunnyvale, CA; AZ Electronics, LLC, Chandler, AZ; Chroma ATE, Inc., Yao Yuan Hsien, TAIWAN; Optimal Test, Moshav Shdema, ISRAEL; PXIT, Lexington, MA; Robert Bosch GmbH, Reutlingen, GERMANY; StatsChipPac, Tempe, AZ; and Swanson Semiconductor Svc., Fort Worth, TX have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Semiconductor Test Consortium, Inc. intends to file additional written notification disclosing all changes in membership.

On May 27, 2003, Semiconductor Test Consortium, Inc. filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act of June 17, 2003 (68 FR 35913).

The last notification was filed with the Department on June 17, 2005. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on July 11, 2005 (70 FR 39796).

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 05–20138 Filed 10–5–05; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

September 29, 2005.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation contact Ira Mills on 202–693–4122 (this is not a toll-free number) or E-Mail: *Mills.Ira@dol.gov*.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for ETA, Office of Management and Budget, Room 10235, Washington, DC 20503, 202–395–7316 (this is not a toll free number), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: Employment and Training Administration (ETA).

Type of Review: Extension of currently approved collection.

Title: O*NET Data Collection Program.

OMB Number: 1205–0421.

Frequency: Other; Every 3 Years.

Affected Public: Individuals or households; Businesses or other for-profits, not-for-profit institutions; Farms Federal Government; and State, local or tribal government.

Type of Response: Reporting.

Number of Respondents: 92,373.

Annual Responses: 92,373.

Average Response Time: Between 30 minutes and 2 hours.

Total Annual Burden Hours: 28,959.

Total Annualized Capital/Startup Costs: 0.

Total Annual Costs (operating/maintaining systems or purchasing services): 0.

Description: The O*NET Data Collection Program is yielding information from job incumbents/occupational specialists on worker and job characteristics to populate the O*NET (Occupation Information Network) database. The O*NET database information is used for a wide range of purposes related to career counseling and development, curriculum design, human resources functions and workforce investment efforts. The data collection methodology will include contacting businesses/associations to gain their cooperation, and collecting information from employees of cooperating businesses/associations as well as occupational specialists for some occupations.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 05–20078 Filed 10–5–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

September 29, 2005.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13,44 U.S.C. Chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation contact Ira Mills

on 202–693–4122 (this is not a toll-free number) or e-Mail: *Mills.Ira@dol.gov*.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for ETA, Office of Management and Budget, Room 10235, Washington, DC 20503, 202–395–7316 (this is not a toll free number), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: Employment and Training Administration (ETA).

Type of Review: Extension of a currently approved collection.

Title: Program Monitoring Report and One-Stop Career Center Complaint Form.

OMB Number: 1205–0039.

Frequency: On occasion; Quarterly.

Affected Public: State, Local, or Tribal government.

Type of Response: Recordkeeping; Reporting.

Number of Respondents: 52.

Annual Responses: 208.

Average Response Time: ETA Form 8429 is 8 minutes and recordkeeping time is 30 minutes; ETA Form 5148 is 70 minutes and recordkeeping time is 1.12 hours.

Total Annual Burden Hours: 1,566.

Total Annualized Capital/Startup Costs: 0.

Total Annual Costs (operating/maintaining systems or purchasing services): 0.

Description: These forms are necessary as part of Federal regulations at 20 CFR part 651, 653 and 658 published as a result of *NAACP* v. *Secretary of Labor*. The forms allow ETA to track regulatory compliance of services provided to Migrant and Seasonal Farmworkers by State Employment Workforce Agencies.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 05–20079 Filed 10–5–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–56,114]

Bourns Microelectronics Modules, Inc., a Subsidiary of Bourns, Inc., New Berlin, WI; Amended Notice of Revised Determination on Remand

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Notice of Revised Determination On Remand on August 16, 2005, applicable to workers of Bourns Microelectronics Modules, Inc., a subsidiary of Bourns, Inc., New Berlin, Wisconsin. The notice was published in the **Federal Register** on August 26, 2005 (70 FR 50409–50410).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers were engaged in the production of computer modules.

The purpose of this amendment is to clarify that individuals who received any benefits under trade adjustment assistance case number TA–W–42,217 may not receive any benefits under trade adjustment assistance case number TA–W–56,114 for the same separation from employment.

The amended certification applicable to TA–W–56,114 is hereby issued as follows:

All workers of Bourns Microelectronics Modules, Inc., a subsidiary of Bourns, Inc., New Berlin, Wisconsin, who became totally or partially separated from employment on or after December 3, 2003 through August 16, 2007, are eligible under Section 223 to apply for adjustment assistance of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974, except that individuals who received any benefits under trade adjustment assistance case number TA–W–42,217 may not receive any benefits under trade adjustment assistance case number TA–W–56,114 for the same separation from employment.

Signed at Washington, DC this 14th day of September 2005.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–5476 Filed 10–5–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–57,908]

Casair, Inc.; Stanton, MI; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on September 9, 2005 in response to a worker petition filed by a company official on behalf of workers at Casair, Inc., Stanton, Michigan.

An active certification covering the petitioning group of workers is already in effect (TA–W–57,399, as amended). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 15th day of September 2005.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–5484 Filed 10–5–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–57,065]

Galileo International Division of Cendant Corporation, Centennial, CO; Notice of Negative Determination on Reconsideration

On August 9, 2005, the Department issued an Affirmative Determination Regarding Application for Reconsideration for the workers and former workers of the subject firm. The notice was published in the **Federal Register** on August 18, 2005 (70 FR 48604–48605).

The petition for the workers of Galileo International, Division of Cendant Corporation, Centennial, Colorado engaged in software development was denied because the petitioning workers did not produce an article within the meaning of section 222 of the Act.

The petitioner contends that the Department erred in its interpretation of work performed at the subject facility as a service and further conveys that software developed by the subject firm was sold to travel agents, travel suppliers and corporation travel offices. The petitioner included the brochures with the description of the software as well as the company Web site which advertises the ''articles'', in order to

support the allegation that workers of the subject firm produce an article.

A company official was contacted for clarification in regard to the nature of the work performed at the subject facility. The official stated the petitioning group of workers at the subject firm was responsible for software development, in particular design, programming, testing and maintenance/support. The official further clarified that customers can either access and download software via the Internet or purchase CD–ROMs with the desktop software. The official stated that the desktop client software developed at the subject firm is mass produced in a CD form for further distribution to customers.

The sophistication of the work involved is not an issue in ascertaining whether the petitioning workers are eligible for trade adjustment assistance, but rather only whether they produced an article within the meaning of section 222 of the Trade Act of 1974.

Technical writing design, programming and testing of the software is not considered production of an article within the meaning of Section 222 of the Trade Act. Petitioning workers do not produce an ''article'' within the meaning of the Trade Act of 1974. Information electronic databases, technical documentation and codes, are not tangible commodities, and they are not listed on the Harmonized Tariff Schedule of the United States (HTS), as classified by the United States International Trade Commission (USITC), Office of Tariff Affairs and Trade Agreements, which describes articles imported to the United States.

To be listed in the HTS, an article would be subject to a duty on the tariff schedule and have a value that makes it marketable, fungible and interchangeable for commercial purposes. Although a wide variety of tangible products are described as articles and characterized as dutiable in the HTS, informational products that could historically be sent in letter form and that can currently be electronically transmitted are not listed in the HTS. Such products are not the type of products that customs officials inspect and that the TAA program was generally designed to address.

The investigation on reconsideration supported the findings of the primary investigation that the petitioning group of workers does not produce an article. However, it was revealed that electronic desktop software created by the subject company is recorded on media devices (CD–ROMs) for further mass-production and distribution. Thus, it was determined that the petitioning group of service workers support production of CD–ROMs containing software.

The Department conducted an additional investigation to determine whether workers can be considered eligible for TAA as directly-impacted workers in support of production of CD–ROMs containing desktop software.

The group eligibility requirements for directly-impacted (primary) workers under section 222(a) the Trade Act of 1974, as amended, can be satisfied in either of two ways:

I. Section (a)(2)(A) all of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. The sales or production, or both, of such firm or subdivision have decreased absolutely; and

C. Increased imports of articles like or directly competitive with articles produced by such firm or subdivision have contributed importantly to such workers' separation or threat of separation and to the decline in sales or production of such firm or subdivision; or

II. Section (a)(2)(B) both of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B There has been a shift in production by such workers' firm or subdivision to a foreign country of articles like or directly competitive with articles which are produced by such firm or subdivision; and

C. One of the following must be satisfied:

1. The country to which the workers' firm has shifted production of the articles is a party to a free trade agreement with the United States;

2. The country to which the workers' firm has shifted production of the articles is a beneficiary country under the Andean Trade Preference Act, African Growth and Opportunity Act, or the Caribbean Basin Economic Recovery Act; or

3. There has been or is likely to be an increase in imports of articles that are like or directly competitive with articles which are or were produced by such firm or subdivision.

The investigation of Galileo International, Travel Distribution Services, Centennial, Colorado, revealed that criteria (I.B) and (II.B) were not met. According to the information provided by the company official, sales and production of CD–ROMs containing desktop software did not decline during the relevant time period. Moreover, the subject firm did not shift production abroad, nor did it increase company imports of CD–ROMs containing desktop software, during the relevant period.

The petitioner further alleges that because workers lost their jobs due to a transfer of job functions to India, petitioning workers should be considered import impacted.

The company official stated that coding and programming job functions were outsourced to a third party joint venture in India. The official also stated that all design documents and other documentation written in India is returned to the United States through electronic mail or Internet.

Technical writing of informational documentation that is electronically transmitted is not considered production within the context of TAA eligibility requirements, so there are no imports of products in this instance. Further, as the PDF files and technical documentation do not become products until they are recorded on media device, there was no shift in production of an ''article'' abroad within the meaning of the Trade Act of 1974.

Conclusion

After reconsideration, I affirm the original notice of negative determination of eligibility to apply for worker adjustment assistance for workers and former workers of Galileo International, Travel Distribution Services, Centennial, Colorado.

Signed at Washington, DC this 20th day of September, 2005.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–5481 Filed 10–5–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended, (19 U.S.C. 2273), the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) number and alternative trade adjustment assistance (ATAA) by

(TA–W) number issued during the periods of September 2005.

In order for an affirmative determination to be made and a certification of eligibility to apply for directly-impacted (primary) worker adjustment assistance to be issued, each of the group eligibility requirements of Section 222(a) of the Act must be met.

I. Section (a)(2)(A) all of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. The sales or production, or both, of such firm or subdivision have decreased absolutely; and

C. Increased imports of articles like or directly competitive with articles produced by such firm or subdivision have contributed importantly to such workers' separation or threat of separation and to the decline in sales or production of such firm or subdivision; or

II. Section (a)(2)(B) both of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. There has been a shift in production by such workers' firm or subdivision to a foreign county of articles like or directly competitive with articles which are produced by such firm or subdivision; and

C. One of the following must be satisfied:

1. The country to which the workers' firm has shifted production of the articles is a party to a free trade agreement with the United States;

2. The country to which the workers' firm has shifted production of the articles to a beneficiary country under the Andean Trade Preference Act, African Growth and Opportunity Act, or the Caribbean Basin Economic Recovery Act; or

3. There has been or is likely to be an increase in imports of articles that are like or directly competitive with articles which are or were produced by such firm or subdivision.

Also, in order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance as an adversely affected secondary group to be issued, each of the group eligibility requirements of Section 222(b) of the Act must be met.

(1) Significant number or proportion of the workers in the workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The workers' firm (or subdivision) is a supplier or downstream producer to a firm (or subdivision) that employed a group of workers who received a certification of eligibility to apply for trade adjustment assistance benefits and such supply or production is related to the article that was the basis for such certification; and

(3) Either—

(A) The workers' firm is a supplier and the component parts it supplied for the firm (or subdivision) described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) A loss or business by the workers' firm with the firm (or subdivision) described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

Negative Determinations for Worker Adjustment Assistance

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

The investigation revealed that criteria (a)(2)(A)(I.C.)(increased imports) and (a)(2)(B)(II.B) (No shift in production to a foreign country) have not been met.

TA–W–57,707; Guardian Manufacturing Co., a subsidiary of J.P. Industries, Willard, OH

TA–W–57,522; ExxonMobil Chemical Co., Films Div., a division of Exxon Mobil Corporation, Stratford, CT

TA–W–57,553; Merix Corporation, Forest Grove, OR

TA–W–57,569; Tescom Corp., Elk River, MN

TA–W–57,573; Xiotech Corp., Eden Prairie, MN

TA–W–57,542; Cray, Inc., Manufacturing Div., Chippewa Falls, WI

TA–W–57,733; HBC Barge, LLC, Brownsville, PA

TA–W–57,597; T.S. Manufacturing, Inc., a subsidiary of Olson Technology, Inc., Atwater, CA

TA–W–57,611; Doane Pet Care Company, Inc., Hillburn Plant, Hillburn, NY

TA–W–57,624; Northwest Manufacturing Corp., Corry, PA

TA–W–57,638; Tarkett Wood, a div. of Tarkett, Tillar, AR

TA–W–57,689; Sony Electronics, Inc., Direct View-CRT Division, Mt. Pleasant, PA

TA–W–57,708; Milwaukee Sign Co., LLC, d/b/a Signstrut, Grafton, WI

TA–W–57,412; Reptron Electronics, Inc., Hibbing, MN

TA–W–57,545; Solvay Pharmaceuticals, Inc., Baudette, MN

TA–W–57,618; Albemarle Knitting Corp., Albemarle, NC

TA–W–57,619 & A, B, C; National Spinning Co., LLC, a subsidiary of National Spinning Co., Inc., Whiteville, NC, Beulaville, NC, Burlington, NC, Corporate Office, Washington, NC

TA–W–57,670; Henkel Corp., Henkel Technologies Division, Olean, NY

TA–W–57,863; Plymouth Printing Co., Inc., Winston-Salem, NC

TA–W–57,657; Midas International Corp., Muffler Corp. of America Division, Hartford Manufacturing Facility, Hartford, WI

The investigation revealed that criteria (a)(2)(A)(I.B.) (Sales or production, or both, did not decline) and (a)(2)(B)(II.B) (No shift in production to a foreign country) have not been met.

TA–W–57,721; American Video Glass Co., a div. of Sony Electronics, Inc., Mt. Pleasant, PA

TA–W–57,712; G&L Motion Control, Inc., a subsidiary of Danaher Corp., Fond du Lac, WI

The investigation revealed that criterion (a)(2)(A)(I.A) and (a)(2)(B)(II.A) (no employment decline) has not been met.

TA–W–57,632; Guilford Mills, Inc., Pine Grove, PA

TA–W–57,855; Tree Top, Inc., Milton-Freewater, OR

TA–W–57,667; Morrison Products, Inc., Tempe, AZ

TA–W–57,617; Gemtron Corp., Holland Div., a subsidiary of Schott Corp., Holland, MI

TA–W–57,847; Nidec America Corp., Norwood, MA

TA–W–57,641; One World Technologies, Inc., Formerly Ryobi Technologies, Anderson, SC

TA–W–57,616; Komex International, Inc., d/b/a Bubblegum, USA, Los Angeles, CA

TA–W–57,603; Cordis Corp., Miami Lakes, FL

TA–W–57,698; Action Staffing-Seneca Office, Workers at Westpoint Stevens, Currently Known as Westpoint Home, Bed Products Division, Clemson, SC

TA–W–57,895; JD Fine and Company, Concord, CA

The workers firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–57,785; Greenfield Montague Transit Area, Greenfield, MA

TA–W–57,784; Greenfield Inn, Greenfield, MA
TA–W–57,589; Tennessee Warehouse and Distribution, LLC, Morrison, TN
TA–W–57,758; Optek Technology, Carrollton, TX
TA–W–57,748; Sportrack Accessories, Port Huron, MI
TA–W–57,741; Globetrans Network, Inc., Staten Island, NY
TA–W–57,555; Apotex Corp., Subdivision of Apotex, Inc., Lincolnshire, IL
TA–W–57,650; Meromex USA, Inc., El Paso, TX
TA–W–57,781; Nu-Gro Technologies, Inc., Gloversville, NY
TA–W–57,651; Cerwin Vega, Inc., A Florida Corp., a div. of Stanton Magnetics, Inc., Chatsworth, CA
TA–W–57,783; Bricker's Restaurant, Greenfield, MA
TA–W–57,823; Ingram Micro, Inc., Williamsville, NY
TA–W–57,824; Hapag-Lloyd Container Line, Norfolk, VA
TA–W–57,677; Brackett Trucking Co., Inc., Bostic, NC
TA–W–57,841; Panasonic Services Company, Factory ServiCenter, A div. of Panasonic Corp. of North America, Langhorne, PA
TA–W–57,666 & A; Philips Semiconductors, Longmont Technology Center, Longmont, CO, Specifications Center, San Jose, CA
TA–W–57,800; Nuvo Network Corp., a subsidiary of Nuvo Network Management, Inc., Pennsauken, NJ
TA–W–57,811; Telemarketing Concepts, Call Center, Yorktown Heights, NY

The investigation revealed that criteria (a)(2)(A)(I.C.) (Increased imports and (a)(2)(B)(II.C) (has shifted production to a foreign country) have not been met.

TA–W–57,728; J.E. Morgan Knitting Mills (Sara Lee), Tamaqua, PA
TA–W–57,812; Sanford North America, Point Making Department, Santa Monica, CA

The investigation revealed that criteria (2) has not been met. The workers firm (or subdivision) is not a supplier or downstream producer to trade-affected companies.

None

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of (a)(2)(A) (increased imports) of Section 222 have been met.

TA–W–57,724; Dan River, Inc., Danville, VA: August 21, 2005.
TA–W–57,630 & A; Regal Ware, Inc., Kewaskum Manufacturing Plant, Kewaskum, WI and West Bend Manufacturing Plant, West Bend, WI: July 31, 2005.
TA–W–57,629; Vivitone, Inc., Paterson, NJ: July 27, 2004.
TA–W–57,859; Beach and Summer Design, Huntington Park, CA: August 26, 2004.
TA–W–57,859; Industrial Distribution Group, working on-site at Oldham Saw Co., a subsidiary of Black and Decker, West Jefferson, NC: June 27, 2004.
TA–W–57,765; Metz Tool and Die, Inc., Rockford, IL: August 8, 2004.
TA–W–57,755; Johnson Textiles, Inc., Southern Phenix Textiles Div., Phenix City, AL: August 9, 2004.
TA–W–57,749 & A; Slater Screen Print Corp., Pawtucket, RI and Slater Dye Works, Inc., Pawtucket, RI: August 15, 2004.
TA–W–57,852; Flanders Industries, Inc., Fort Smith, AR: August 26, 2004.
TA–W–57,821; Union Stamping & Assembly, Inc., d/b/a Mayflower Vehicle Systems, South Charleston, WV: August 17, 2004.
TA–W–57,792; Kwan's Sewing, Inc., San Francisco, CA: July 25, 2004.
TA–W–57,762; Crotty Corporation, Celina Division, Celina, TN: August 13, 2004.
TA–W–57,679; Eastern Tool and Stamping Co., Inc., Saugus, MA: July 25, 2004.
TA–W–57,659; VF Intimates, LP, a div. of The VF Corp., McAllen, TX: August 1, 2004.
TA–W–57,653; Northwest Automatic Productions, Inc., Minneapolis, MN: August 1, 2004.
TA–W–57,614; Engineered Machined Products, Inc., Plant 1 and 2, Manufacturing Div., Escanaba, MI: July 13, 2004.
TA–W–57,602; Renco Finishing Corporation, Fairlawn, NJ: July 29, 2004.
TA–W–57,665; American Outpost, LLC, Zelienople, PA: July 25, 2004.
TA–W–57,816; Nidec America Corp., Manufacturing Div., a subsidiary of Nidec Corp-Japan, including on-site leased workers of Jaci Carroll Staffing and Alternative Employment, Inc., Torrington, CT: August 22, 2004.
TA–W–57,786; Laufen International, Inc., a subsidiary of Group Roca, Tulsa, OK: July 29, 2004.
TA–W–57,751; The Pulaski Rubber Co., Pulaski, TN: August 15, 2004.
TA–W–57,656; Sun's Manufacturing, Inc., Lansford Div., Lansford, PA: July 23, 2004.
TA–W–57,648; U.S. Textile Corp., Newland, NC: July 22, 2004.
TA–W–57,636; Delafoil Ohio, Inc., Perrysburg, OH: January 24, 2005.
TA–W–57,773; OWT Industries, Inc., Outdoor Products Div., including on-site leased workers of Staffmasters, USA, Inc., Pickens, SC: August 17, 2004.
TA–W–57,686; Raybestos Automotive Components, a subsidiary of Raytech Corporation, Sterling Heights, MI: August 2, 2004.
TA–W–57,647; PPG Fiber Glass Products, Shelby, NC: July 28, 2004.
TA–W–57,631 & A; Brodnax Mills, Inc., Brodnax, VA and Sales Office, New York, NY: June 29, 2004.
TA–W–57,627; Clearwater Loaders, Inc., leased on-site workers at Unifi-Kinston, LLC, formerly d/b/a Invista, S.A.R.L., a subsidiary of Koch Industries, formerly d/b/a Invista, Inc., a subsidiary of E.I. DuPont de Nemours & Company, Inc., Kinston, NC
TA–W–57,533; Atlas Wire and Cable Corporation, Montebello, CA: July 8, 2004.
TA–W–57,445; Liz Claiborne, Inc., Ellen Tracy Div., New York, NY: June 21, 2004.
TA–W–57,690; Keys Health & Fitness, L.P., including on-site leased workers of Advanced Temporaries, Tyler, TX: August 5, 2004.
TA–W–57,592; Anvil International, Inc., Columbia, PA: July 14, 2004.
TA–W–57,576; Meke, Inc., New Hollard, PA: July 17, 2004.
TA–W–57,562; Kraco Enterprises, Inc., Compton, CA: July 11, 2004.
TA–W–57,561; Concept Fabrics, Inc., Asheboro, NC: July 12, 2004.
TA–W–57,556; Webb Wheel Products, Inc., Aftermarket Division, Siloam Spring, AR: July 14, 2004.
TA–W–57,481; Crown City Plating, El Monte, CA: June 15, 2004.
TA–W–57,546 & A, B; Westpoint Stevens, Inc., Now Known as Westpoint Home, Inc., including on-site leased workers of Pro Resources, Middletown, IN, Anderson, IN and Daleville, IN: July 10, 2004.
TA–W–57,572; Wagner Castings Co., a/k/a Interment Decatur Foundry, Decatur, IL: July 18, 2004.
TA–W–57,571; Cap America, Fredericktown, MO: July 12, 2004.
TA–W–57,563; Addie Fashions, Inc., West Union, SC: July 7, 2004.
TA–W–57,702; Plastic Dress-Up Co., El Monte, CA: August 9, 2004.

TA–W–57,643; Madeleine Manufacturing, Inc., Union, SC: March 26, 2004.
TA–W–57,613; Advantek, Inc., a subsidiary of Siegel-Robert, Inc., Minnetonka, MN: July 22, 2004.
TA–W–57,547; Archway & Mothers Cookie Co., Red Bud, IL: June 30, 2004.
TA–W–57,655; Interforest Corp., Darlington Div., Darlington, PA: July 21, 2004.
TA–W–57,735; Kamashian Engineering, Inc., Metal Stamping and Assembly Department, Bellflower, CA: August 12, 2004.
TA–W–57,634; General Henry Biscuit, a div. of Archway & Mother's Cookie Co., Duquoin, IL: July 25, 2004.
TA–W–57,525; Guess?, Inc., Cutting Department, Los Angeles, CA: June 23, 2004.
TA–W–57,588; Benchmark Electronics, Inc., DATS Div., Loveland, CO: July 19, 2004.

The following certifications have been issued. The requirements of (a)(2)(B) (shift in production) of Section 222 have been met.

TA–W–57,352; Specialty Filaments, Inc., Burlington Div., Burlington, VT: May 23, 2004.
TA–W–57,726; General Electric, Consumer and Industrial Div., Tell City, IN: August 10, 2004.
TA–W–57,715; Sanmina-SCI Corp., Enterprise Computing and Storage Div., including leased workers of Aerotek Staffing Services and Remedy Staffing, Fountain, CO: August 9, 2004.
TA–W–57,692; Chicago Miniature Lighting, IT, Inc., Hackensack, NJ: August 5, 2004.
TA–W–57,699; Rockwell Collins, Airshow Systems Div., including leased workers of Volt Temporary Agency, Kirkland, WA: August 8, 2004.
TA–W–57,797; Southwire Company, Electrical Div., Long Beach, CA: August 11, 2004.
TA–W–57,685; Tiro Industries, LLC, including on-site leased workers of Excel Staffing, Fridley, MN: July 22, 2004.
TA–W–57,884 & A; General Electric, Components-Specialty Transformer Div., Fort Wayne, IN and Motors and Controls Div., Fort Wayne, IN: September 1, 2004.
TA–W–57,858 & A; International Legwear Group, Neuville Industries, Inc., including on-site leased workers from Catawba Staffing, Express and Accuforce, Hildebran, NC and including on-site leased workers from Optimum Staffing, Athens, TN: August 25, 2004.
TA–W–57,818; Trim Masters, Inc., including on-site leased workers of Nesco Resource, Kelly Services and Staffing Alternatives, Harrodsburg, KY: August 10, 2004.
TA–W–57,772; Bobs Candies, Inc., Div. of Farley's and Sathers Candy Co., Inc., including on-site leased workers of Kelly Services, Albany, GA: August 11, 2004.
TA–W–57,795; 3M Company, Fairmont, MN: August 18, 2004.
TA–W–57,678; Super Sack VA, Inc., a subsidiary of B.A.G. Corp., Manufacturing Div., Pennington Gap, VA: August 6, 2005.
TA–W–57,605; Ludlow Textiles Co., Inc., including on-site leased workers from Magellan, Ludlow, MA: July 21, 2004.
TA–W–57,731; Teepak Limited Liability Corp., Shirring Department, Danville Plant, Danville, IL: August 10, 2004.
TA–W–57,640; Molex, Inc., Tool Room/Build Group, Lisle, IL: July 28, 2004.
TA–W–57,779; Sonoco, Inc., Industrial Products Div., including leased workers of Adecco Staffing, Canandaigua, NY: August 17, 2004.
TA–W–57,764; Merrimac Paper Co., Lawrence, MA: August 8, 2004.
TA–W–57,752; Nestle USA, St. Louis, MO: August 12, 2004.
TA–W–57,717; Hooker Furniture Co., Pleasant Garden Plant, Pleasant Garden, NC: August 8, 2004.
TA–W–57,729; Teleflex Medical, including leased workers of Adecco, Research Triangle Park, NC: August 12, 2004.
TA–W–57,705; Components Manufacturing Co., Inc., Air Conditioning Div., a subsidiary of Rheem Manufacturing Co., including on-site leased workers of Kelly Services and Spherion, Trenton, SC: August 1, 2004.
TA–W–57,664; Emerson Flow Controls, St. Louis, MO: July 9, 2005.
TA–W–57,606; International Paper, Containerboard Div., Ft. Madison, IA: July 22, 2004.
TA–W–57,668; Culp, Inc., Artee-Shelby Plant, Shelby, NC: August 2, 2004.
TA–W–57,448; Mammoth, Inc., Chaska, MN: June 24, 2004.
TA–W–57,768; Younger Manufacturing Co., Torrance, CA: August 12, 2004.
TA–W–57,732; Microtek Medical, a subsidiary of Microtek Medical Holdings, Inc., Columbus, MS: August 12, 2004.
TA–W–57,672; Cambridge-Lee Industries, LLC, Reading Tube Div., including on-site leased workers of Gage Personnel, Contemporary Personnel and Advance Personnel, Reading, PA: August 4, 2004.
TA–W–57,734; Focus Enhancements, Inc., Campbell, CA: August 5, 2004.
TA–W–57,551; Creo Americas, Inc., Rosemont, IL: July 15, 2004.
TA–W–57,777; Gemtron Corporation, a subsidiary of Schott Corporation, Sweetwater, TN: August 16, 2004.
TA–W–57,714; U.S. Button Corp., a subsidiary of Emsig Manufacturing, Putnam, CT: August 8, 2004.
TA–W–57,684; Rittal Corporation, a subsidiary of Rittal-Werk, Springfield, OH: July 27, 2004.

The following certification has been issued. The requirement of downstream producer to a trade certified firm has been met.

None

Negative Determinations for Alternative Trade Adjustment Assistance

In order for the Division of Trade Adjustment Assistance to issued a certification of eligibility to apply for Alternative Trade Adjustment Assistance (ATAA) for older workers, the group eligibility requirements of Section 246(a)(3)(A)(ii) of the Trade Act must be met.

In the following cases, it has been determined that the requirements of Section 246(a)3)ii) have not been met for the reasons specified.

The Department as determined that criterion (2) of Section 246 has not been met. Workers at the firm possess skills that are easily transferable.

TA–W–53,321; Charter Fabrics, Inc., New York, NY
TA–W–57,525; Guess?, Inc., Cutting Department, Los Angeles, CA: June 23, 2004.
TA–W–57,735; Kamashian Engineering, Inc., Metal Stamping and Assembly Department, Bellflower, CA
TA–W–57,655; Interforest Corp., Darlington Div., Darlington, PA
TA–W–57,610; Gerdau Ameristeel, Beaumont Mill Div., workers' wages were reported under Cargill, Inc., Beaumont, TX
TA–W–57,694; Cequent Consumer Products, a Subsidiary of Trimas Corp., Sheffield, PA
TA–W–57,534; RAM Industries, LLC, Harnessing Department, including on-site leased workers of Gage Personnel Services, Contemporary @ Work Personnel Services, and Manpower Temporary Services, Leesport, PA
TA–W–57,777; Gemtron Corporation, a subsidiary of Schott Corp., Sweetwater, TN
TA–W–57,714; U.S. Button Corp., a subsidiary of Emsig Manufacturing, Putnam, CT
TA–W–57,684; Rittal Corp., a subsidiary of Rittal-Werk, Springfield, OH

TA–W–57,448; Mammoth, Inc., Chaska, MN
TA–W–57,768; Younger Manufacturing Co., Torrance, CA
TA–W–57,672; Cambridge-Lee Industries, LLC, Reading Tube Division, including on-site leased workers of Gage Personnel, Contemporary, Personnel and Advance Personnel, Reading, PA
TA–W–57,732; Microtek Medical, a subsidiary of Microtek Medical Holdings, Inc., Columbus, MS

The Department as determined that criterion (1) of Section 246 has not been met. Workers at the firm are 50 years of age or older.

TA–W–57,588; Benchmark Electronics, Inc., DATS Div., Loveland, CO
TA–W–57,634; General Henry Biscuit, a div. of Archway & Mother's Cookie Co., Duquoin, IL
TA–W–57,547; Archway & Mothers Cookie Company, Red Bud, IL

Since the workers are denied eligibility to apply for TAA, the workers cannot be certified eligible for ATAA.

TA–W–57,522; ExxonMobil Chemical Co., Films Div., a div. of Exxon Mobil Corp., Stratford, CT
TA–W–57,553; Merix Corp., Forest Grove, OR
TA–W–57,569; Tescom Corp., Elk River, MN
TA–W–57,573; Xiotech Corp., Eden Prairie, MN
TA–W–57,542; Cray, Inc., Manufacturing Div., Chippewa Falls, WI
TA–W–57,733; HBC Barge, LLC, Brownsville, PA
TA–W–57,597; T.S. Manufacturing, Inc., a subsidiary of Olson Technology, Inc., Atwater, CA
TA–W–57,611; Doane Pet Care Co., Inc., Hillburn Plant, Hillburn, NY
TA–W–57,624; Northwest Manufacturing Corp., Corry, PA
TA–W–57,638; Tarkett Wood, a div. of Tarkett, Tillar, AR
TA–W–57,689; Sony Electronics, Inc., Direst View-CRT Div., Mt. Pleasant, PA
TA–W–57,708; Milwaukee Sign Co., LLC, d/b/a Signstrut, Grafton, WI
TA–W–57,412; Reptron Electronics, Inc., Hibbing MN
TA–W–57,545; Solvay Pharmaceuticals, Inc., Baudette, MN
TA–W–57,618; Albemarle Knitting Corp., Albemarle, NC
TA–W–57,619 & A, B, C; National Spinning Co., LLC, a subsidiary of National Spinning Co., Inc., Whiteville, NC, Beulaville, NC, Burlington, NC and Corporate Office, Washington, NC
TA–W–57,670; Henkel Corp., Henkel Technologies Div., Olean, NY
TA–W–57,863; Plymouth Printing Co., Inc., Winston-Salem, NC
TA–W–57,657; Midas International Corp., Muffler Corporation of America Div., Hartford Manufacturing Facility, Hartford, WI
TA–W–57,632; Guilford Mills, Inc., Pine Grove, PA
TA–W–57,712; G&L Motion Control, Inc., a subsidiary of Danaher Corp., Fond du Lac, WI
TA–W–57,855; TreeTop, Inc., Milton-Freewater, OR
TA–W–57,667; Morrison Products, Inc., Tempe, AZ
TA–W–57,617; Gemtron Corp., Holland Div., a subsidiary of Schott Corp., Holland, MI
TA–W–57,847; Nidec America Corp., Norwood, MA
TA–W–57,641; One World Technologies, Inc., Formerly Ryobi Technologies, Anderson, SC
TA–W–57,616; Komex International, Inc., d/b/a Bubblegum, USA, Los Angeles, CA
TA–W–57,698; Action Staffing-Seneca Office, Workers at Westpoint Stevens, Currently Known as Westpoint Home, Bed Products Div., Clemson, SC
TA–W–57,603; Cordis Corp., Miami Lakes, FL
TA–W–57,741; Globetrans Network, Inc., Staten Island, NY
TA–W–57,555; Apotex Corp., subdivision of Apotex, Inc., Lincolnshire, IL
TA–W–57,650; Meromex USA, Inc., El Paso, TX
TA–W–57,781; Nu-Gro Technologies, Inc., Gloversville, NY
TA–W–57,651; Cerwin Vega, Inc. a Florida Corp., a div. of Stanton Magnetics, Inc., Chatsworth, CA
TA–W–57,783; Bricker's Restaurant, Greenfield, MA
TA–W–57,823; Ingram Micro, Inc., Williamsville, NY
TA–W–57,677; Brackett Trucking Co., Inc., Bostic, NC
TA–W–57,841; Panasonic Services Co., Factory ServiCenter, a div. of Panasonic Corp., of North America, Langhorne, PA
TA–W–57,666 & A; Philips Semiconductors, Longmont Technology Center, Longmont, CO and Specifications Center,
TA–W–57,800; Nuvo Network Corporation, a subsidiary of Nuvo Network Management, Inc., Pennsauken, NJ
TA–W–57,811; Telemarketing Concepts, Call Center, Yorktown Heights, NY
TA–W–57,728; J.E. Morgan Knitting Mills (Sara Lee), Tamaqua, PA
TA–W–57,812; Sanford North America, Point Making Department, Santa Monica, CA

The Department has determined that criterion (3) of Section 246 has not been met. Competition conditions within the workers' industry are not adverse.

TA–W–57,551; Creo Americas, Inc., Rosemont, IL
TA–W–57,734; Focus Enhancements, Inc., Campbell, CA

Affirmative Determinations for Alternative Trade Ajdustment Assistance

In order for the Division of Trade Adjustment Assistance to issue a certification of eligibility to apply for Alternative Trade Adjustment Assistance (ATAA) for older workers, the group eligibility requirements of Section 246(a)(3)(A)(ii) of the Trade Act must be met.

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determinations.

In the following cases, it has been determined that the requirements of Section 246(a)(3)(ii) have been met.

I. Whether a significant number of workers in the workers' firm are 50 years of age or older.

II. Whether the workers in the workers' firm possess skills that are not easily transferable.

III. The competitive conditions within the workers' industry (*i.e.*, conditions within the industry are adverse).

TA–W–57,724; Dan River, Inc., Danville, VA: August 21, 2005.
TA–W–57,630 & A; Regal Ware, Inc., Kewaskum Manufacturing Plant, Kewaskum, WI and West Bend Manufacturing Plant, West Bend, WI: July 31, 2005.
TA–W–57,629; Vivitone, Inc., Paterson, NJ: July 27, 2004.
TA–W–57,859; Beach and Summer Design, Huntington Park, CA: August 26, 2004.
TA–W–57,859; Industrial Distribution Group, working on-site at Oldham Saw Co., a subsidiary of Black and Decker, West Jefferson, NC: June 27, 2004.
TA–W–57,765; Metz Tool and Die, Inc., Rockford, IL: August 8, 2004.
TA–W–57,755; Johnson Textiles, Inc., Southern Phenix Textiles Div., Phenix City, AL: August 9, 2004.
TA–W–57,749 & A; Slater Screen Print Corp., Pawtucket, RI and Slater Dye Works, Inc., Pawtucket, RI: August 15, 2004.
TA–W–57,852; Flanders Industries, Inc., Fort Smith, AR: August 26, 2004.

TA–W–57,821; Union Stamping & Assembly, Inc., d/b/a Mayflower Vehicle Systems, South Charleston, WV: August 17, 2004.

TA–W–57,792; Kwan's Sewing, Inc., San Francisco, CA: July 25, 2004.

TA–W–57,762; Crotty Corporation, Celina Division, Celina, TN: August 13, 2004.

TA–W–57,679; Eastern Tool and Stamping Co., Inc., Saugus, MA: July 25, 2004.

TA–W–57,659; VF Intimates, LP, a div. of The VF Corp., McAllen, TX: August 1, 2004.

TA–W–57,653; Northwest Automatic Productions, Inc., Minneapolis, MN: August 1, 2004.

TA–W–57,614; Engineered Machined Products, Inc., Plant 1 and 2, Manufacturing Div., Escanaba, MI: July 13, 2004.

TA–W–57,602; Renco Finishing Corporation, Fairlawn, NJ: July 29, 2004.

TA–W–57,665; American Outpost, LLC, Zelienople, PA: July 25, 2004.

TA–W–57,816; Nidec America Corp., Manufacturing Div., a subsidiary of Nidec Corp-Japan, including on-site leased workers of Jaci Carroll Staffing and Alternative Employment, Inc., Torrington, CT: August 22, 2004.

TA–W–57,786; Laufen International, Inc., a subsidiary of Group Roca, Tulsa, OK: July 29, 2004.

TA–W–57,751; The Pulaski Rubber Co., Pulaski, TN: August 15, 2004.

TA–W–57,656; Sun's Manufacturing, Inc., Lansford Div., Lansford, PA: July 23, 2004.

TA–W–57,648; U.S. Textile Corp., Newland, NC: July 22, 2004.

TA–W–57,636; Delafoil Ohio, Inc., Perrysburg, OH: January 24, 2005.

TA–W–57,773; OWT Industries, Inc., Outdoor Products Div., including on-site leased workers of Staffmasters, USA, Inc., Pickens, SC: August 17, 2004.

TA–W–57,686; Raybestos Automotive Components, a subsidiary of Raytech Corporation, Sterling Heights, MI: August 2, 2004.

TA–W–57,647; PPG Fiber Glass Products, Shelby, NC: July 28, 2004.

TA–W–57,631 & A; Brodnax Mills, Inc., Brodnax, VA and Sales Office, New York, NY: June 29, 2004.

TA–W–57,627; Clearwater Loaders, Inc., leased on-site workers at Unifi-Kinston, LLC, formerly d/b/a Invista, S.A.R.L., a subsidiary of Koch Industries, formerly d/b/a Invista, Inc., a subsidiary of E.I. DuPont de Nemours & Company, Inc., Kinston, NC

TA–W–57,533; Atlas Wire and Cable Corporation, Montebello, CA: July 8, 2004.

TA–W–57,445; Liz Claiborne, Inc., Ellen Tracy Div., New York, NY: June 21, 2004.

TA–W–57,690; Keys Health & Fitness, L.P., including on-site leased workers of Advanced Temporaries, Tyler, TX: August 5, 2004.

TA–W–57,592; Anvil International, Inc., Columbia, PA: July 14, 2004.

TA–W–57,576; Meke, Inc., New Hollard, PA: July 17, 2004.

TA–W–57,562; Kraco Enterprises, Inc., Compton, CA: July 11, 2004.

TA–W–57,561; Concept Fabrics, Inc., Asheboro, NC: July 12, 2004.

TA–W–57,556; Webb Wheel Products, Inc., Aftermarket Division, Siloam Spring, AR: July 14, 2004.

TA–W–57,481; Crown City Plating, El Monte, CA: June 15, 2004.

TA–W–57,546 & A, B; Westpoint Stevens, Inc., Now Known as Westpoint Home, Inc., including on-site leased workers of Pro Resources, Middletown, IN, Anderson, IN and Daleville, IN: July 10, 2004.

TA–W–57,572; Wagner Castings Co., a/k/a Interment Decatur Foundry, Decatur, IL: July 18, 2004.

TA–W–57,571; Cap America, Fredericktown, MO: July 12, 2004.

TA–W–57,563; Addie Fashions, Inc., West Union, SC: July 7, 2004.

TA–W–57,702; Plastic Dress-Up Co., El Monte, CA: August 9, 2004.

TA–W–57,643; Madeleine Manufacturing, Inc., Union, SC: March 26, 2004.

TA–W–57,613; Advantek, Inc., a subsidiary of Siegel-Robert, Inc., Minnetonka, MN: July 22, 2004.

TA–W–57,352; Specialty Filaments, Inc., Burlington Div., Burlington, VT: May 23, 2004.

TA–W–57,726; General Electric, Consumer and Industrial Div., Tell City, IN: August 10, 2004.

TA–W–57,715; Sanmina-SCI Corp., Enterprise Computing and Storage Div., including leased workers of Aerotek Staffing Services and Remedy Staffing, Fountain, CO: August 9, 2004.

TA–W–57,692; Chicago Miniature Lighting, IT, Inc., Hackensack, NJ: August 5, 2004.

TA–W–57,699; Rockwell Collins, Airshow Systems Div., including leased workers of Volt Temporary Agency, Kirkland, WA: August 8, 2004.

TA–W–57,797; Southwire Company, Electrical Div., Long Beach, CA: August 11, 2004.

TA–W–57,685; Tiro Industries, LLC, including on-site leased workers of Excel Staffing, Fridley, MN: July 22, 2004.

TA–W–57,884 & A; General Electric, Components-Specialty Transformer Div., Fort Wayne, IN and Motors and Controls Div., Fort Wayne, IN: September 1, 2004.

TA–W–57,858 & A; International Legwear Group, Neuville Industries, Inc., including on-site leased workers from Catawba Staffing, Express and Accuforce, Hildebran, NC and including on-site leased workers from Optimum Staffing, Athens, TN: August 25, 2004.

TA–W–57,818; Trim Masters, Inc., including on-site leased workers of Nesco Resource, Kelly Services and Staffing Alternatives, Harrodsburg, KY: August 10, 2004.

TA–W–57,772; Bobs Candies, Inc., Div. of Farley's and Sathers Candy Co., Inc., including on-site leased workers of Kelly Services, Albany, GA: August 11, 2004.

TA–W–57,795; 3M Company, Fairmont, MN: August 18, 2004.

TA–W–57,678; Super Sack VA, Inc., a subsidiary of B.A.G. Corp., Manufacturing Div., Pennington Gap, VA: August 6, 2005.

TA–W–57,605; Ludlow Textiles Co., Inc., including on-site leased workers from Magellan, Ludlow, MA: July 21, 2004.

TA–W–57,731; Teepak Limited Liability Corp., Shirring Department, Danville Plant, Danville, IL: August 10, 2004.

TA–W–57,640; Molex, Inc., Tool Room/Build Group, Lisle, IL: July 28, 2004.

TA–W–57,779; Sonoco, Inc., Industrial Products Div., including leased workers of Adecco Staffing, Canandaigua, NY: August 17, 2004.

TA–W–57,764; Merrimac Paper Co., Lawrence, MA: August 8, 2004.

TA–W–57,752; Nestle USA, St. Louis, MO: August 12, 2004.

TA–W–57,717; Hooker Furniture Co., Pleasant Garden Plant, Pleasant Garden, NC: August 8, 2004.

TA–W–57,729; Teleflex Medical, including leased workers of Adecco, Research Triangle Park, NC: August 12, 2004.

TA–W–57,705; Components Manufacturing Co., Inc., Air Conditioning Div., a subsidiary of Rheem Manufacturing Co., including on-site leased workers of Kelly Services and Spherion, Trenton, SC: August 1, 2004.

TA–W–57,664; Emerson Flow Controls, St. Louis, MO: July 9, 2005.

TA–W–57,606; International Paper, Containerboard Div., Ft. Madison, IA: July 22, 2004.

TA–W–57,668; Culp, Inc., Artee-Shelby Plant, Shelby, NC: August 2, 2004.

I hereby certify that the aforementioned determinations were issued during the month of September 2005. Copies of These determinations are available for inspection in Room C–5311, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: Date: September 27, 2005.

Timothy Sullivan,

Director, Division of Trade Adjustment Assistance.

[FR Doc. E5–5478 Filed 10–5–05; 8:45 am]

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DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–56,696 and TA–W–56,696A]

Hewlett-Packard Company Imaging & Printing Group—Technology Platforms Division Including On-Site Leased Workers of Chimes, Inc., Corvallis, OR; Including an Employee of Hewlett-Packard Company Imaging & Printing Group—Technology Platforms Division Corvallis, OR Located in Chino, CA; Amended Notice of Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974, (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification Regarding Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on April 7, 2005, applicable to workers of Hewlett-Packard Company, Imaging & Printed Group—Technology Platforms Division, including on-site leased workers of Chimes, Inc., Corvallis, Oregon. The notice was published in the **Federal Register** on May 16, 2005 (70 FR 25862).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. New information shows that a worker separation occurred involving an employee of the Corvallis, Oregon facility of the Imaging & Printing Group—Technology Platforms Division of Hewlett-Packard Company located in Chino, California. Ms. Sheri Milne provided various support services for the production of inkjet cartridges for small desktop printers at the Corvallis, Oregon location of the subject firm.

Based on these findings, the Department is amending this certification to include an employee of the Corvallis, Oregon facility of the Imaging & Printing Group—Technology Platforms Division of Hewlett-Packard Company located in Chimes, California.

The intent of the Department's certification is to include all workers of Hewlett-Packard Company, Imaging & Printing Group—Technology Platforms Division, Corvallis, Oregon, who were adversely affected by a shift in production to Singapore.

The amended notice applicable to TA–W–56,696 is hereby issued as follows:

All workers of Hewlett-Packard Company, Imaging & Printing Group—Technology Platforms Division, including on-site leased workers of Chimes, Inc., Corvallis, Oregon (TA–W–56,696), including an employee of Hewlett-Packard Company, Imaging & Printing Group—Technology Platforms Division, Corvallis, Oregon located in Chino, California (TA–W–56,696A), who became totally or partially separated from employment on or after March 7, 2004, through April 7, 2007, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974, as amended.

Signed at Washington, DC, this 26th day of September 2005.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–5477 Filed 10–5–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment And Training Administration

[TA–W–57,491]

Iberia Sugar Cooperative, Inc., New Iberia, LA; Notice of Revised Determination on Reconsideration

By letter dated September 21, 2005 a company official requested administrative reconsideration regarding the Department's Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to the workers of the subject firm.

The initial investigation resulted in a negative determination signed on August 8, 2005 was based on the finding that imports of raw cane sugar and blackstrap molasses did not contribute importantly to worker separations at the subject plant and no shift of production to a foreign source occurred. The denial notice was published in the **Federal Register** on September 8, 2005 (70 FR 53389).

To support the request for reconsideration, the company official supplied additional information. Upon further review and contact with the subject firm's major declining customers, it was revealed that the customers increased their reliance on imported raw cane sugar and blackstrap molasses during the relevant period. The imports accounted for a meaningful portion of the subject plant's lost sales and production. The investigation further revealed that production and employment at the subject firm declined during the relevant time period.

In accordance with Section 246 the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor herein presents the results of its investigation regarding certification of eligibility to apply for alternative trade adjustment assistance (ATAA) for older workers.

In order for the Department to issue a certification of eligibility to apply for ATAA, the group eligibility requirements of Section 246 of the Trade Act must be met. The Department has determined in this case that the requirements of Section 246 have been met.

A significant number of workers at the firm are age 50 or over and possess skills that are not easily transferable. Competitive conditions within the industry are adverse.

Conclusion

After careful review of the additional facts obtained on reconsideration, I conclude that increased imports of articles like or directly competitive with those produced at Iberia Sugar Cooperative, Inc., New Iberia, Louisiana, contributed importantly to the declines in sales or production and to the total or partial separation of workers at the subject firm. In accordance with the provisions of the Act, I make the following certification:

''All workers of Iberia Sugar Cooperative, Inc., New Iberia, Louisiana who became totally or partially separated from employment on or after June 20, 2004 through two years from the date of this certification, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.''

Signed in Washington, DC, this 26th day of September 2005.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–5489 Filed 10–5–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–57,907]

JBL Resources; Rockford, MI; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on September 9, 2005 in response to a worker petition filed by a company official on behalf of workers at JBL Resources, Rockford, Michigan.

An active certification covering the petitioning group of workers is already in effect (TA–W–57,399, as amended). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 15th day of September 2005.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–5483 Filed 10–5–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under title II, chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than October 17, 2005.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than October 17, 2005.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 27th day of September 2005.

Timothy Sullivan,

Director, Division of Trade Adjustment Assistance.

APPENDIX

[58 TAA petitions instituted between 9/12/05 and 9/16/05]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
57921	Mohawk Rug and Textiles (State)	Bentonville, AR	09/12/05	09/09/05
57922	Concentra Network Services (Comp)	Franklin, TN	09/12/05	09/01/05
57923	Boise Cascade (WRIW)	Independence, OR	09/12/05	09/06/05
57924	Rutherford Chemical, Ltd. (Wkrs)	Harriman, NY	09/12/05	09/09/05
57925	Sligh Furniture Co. (Comp)	Holland, MI	09/12/05	09/07/05
57926	Avery Dennison Corporation (Comp)	Statesville, NC	09/12/05	09/09/05
57927	Hamtech (Comp)	Big Rapids, MI	09/12/05	09/09/05
57928	Wabash Alloys (Wkrs)	Wabash, IN	09/12/05	09/09/05
57929	Sappi Fine Paper, N.A. (PACE)	Muskegon, MI	09/12/05	09/09/05
57930	Cabinet Ind., Inc. (Wkrs)	Danville, PA	09/12/05	09/08/05
57931	Geo Specialty Chemicals (State)	Gibbstown, NJ	09/12/05	09/02/05
57932	Sterling Trimmings Co. (State)	Jersey City, NJ	09/12/05	09/12/05
57933	Solectron (Comp)	West Palm Beach, FL	09/12/05	09/02/05
57934	Arkay Plastics Illinois, Inc. (Comp)	Paris, IL	09/12/05	08/25/05
57935	Jeff Hamilton Collections (State)	Los Angeles, CA	09/12/05	09/01/05
57936	North American Container Corp. (Comp)	Lawrenceburg, TN	09/12/05	09/01/05
57937	Continental Bag Company (State)	Crowley, LA	09/12/05	08/25/05
57938	OAG Worldwide (Wkrs)	Downers Grove, IL	09/12/05	08/31/05
57939	CMOR Manufacturing, Inc. (State)	Rocklin, CA	09/12/05	08/26/05
57940	Ruder Systems, Inc. (Wkrs)	Webster, NY	09/12/05	08/19/05
57941	Ward Product, LLC (IBEW)	Amsterdam, NY	09/13/05	09/06/05
57942	Ethan Allen Operations, Inc. (Comp)	Dublin, VA	09/13/05	09/09/05
57943	Henredon Furniture Industries, Inc. (Wkrs)	Morganton, NC	09/13/05	09/13/05
57944	National Tool and Manufacturing (State)	Kenilworth, NJ	09/13/05	09/12/05
57945	PolyVision Corporation (GPC)	Clymer, PA	09/13/05	09/08/05
57946	Acme Gear Co., Inc. (State)	Englewood, NJ	09/13/05	09/13/05
57947	Laminating Specialties, Inc. (Wkrs)	Warren, RI	09/13/05	08/26/05
57948	Amkor Technology (State)	Chandler, AZ	09/14/05	09/12/05
57949	C and W Hosiery (State)	Ft. Payne, AL	09/14/05	09/12/05
57950	Eastman Wind, Inc. (Wkrs)	Elkhart, IN	09/14/05	09/12/05
57951	Laymon Hughes Hos., LLC (Comp)	Ft. Payne, AL	09/14/05	09/12/05
57952	Paramount Cards, Inc. (Comp)	Pawtucket, RI	09/14/05	09/13/05

APPENDIX—Continued

[58 TAA petitions instituted between 9/12/05 and 9/16/05]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
57953	Ocean Breeze (State)	Vernon, CA	09/14/05	09/13/05
57954	Wausau Paper (Comp)	Brokaw, WI	09/14/05	09/14/05
57955	FCI USA, Inc. (Comp)	Mt. Union, PA	09/14/05	09/14/05
57956	Modern Vending and Catering (Wkrs)	Jamestown, KY	09/14/05	08/31/05
57957	Dana Corporation (UAW)	Muskegon Heights, MI	09/14/05	09/12/05
57958	Sanmina-SCI (Wkrs)	Bothell, WA	09/15/05	09/12/05
57959	Hewlett-Packard (Comp)	Boise, ID	09/15/05	09/15/05
57960	Solectron Corp. (State)	Lumberton, NJ	09/15/05	09/14/05
57961	Holyoke Card Co. (Wkrs)	Springfield, MA	09/15/05	09/14/05
57962	Steelcase, Inc. (Comp)	Grand Rapids, MI	09/15/05	09/13/05
57963	Coopervision (State)	Huntington Beach, CA	09/15/05	09/14/05
57964	Corlett-Turner Company (Comp)	Zeeland, MI	09/15/05	09/02/05
57965	Volex, Inc. (Comp)	Conover, NC	09/15/05	09/15/05
57966	IBCC Industries (State)	Rockford, MN	09/15/05	09/15/05
57967	LXD, Inc. (IBT)	Cleveland, OH	09/15/05	09/08/05
57968	IBM (Wkrs)	Maumee, OH	09/15/05	09/08/05
57969	Holm Industries, Inc. (Comp)	Scottsburg, IN	09/15/05	08/31/05
57970	Kellwood New England (Comp)	Brockton, MA	09/15/05	09/08/05
57971	Sapko International, Inc. (Wkrs)	Tompkinsville, KY	09/15/05	08/30/05
57972	ATT Telemarketing Dist. Services (State)	Marietta, GA	09/15/05	09/06/05
57973	Tower Automotive (UAW)	Kendallville, IN	09/15/05	09/06/05
57974	Baltrans Global Logistics, LTD. (Wkrs)	Ft. Collins, CO	09/16/05	08/30/05
57975	TRW Automotive (Wkrs)	Fremont, OH	09/16/05	09/15/05
57976	Honeywell International, Inc. (Comp)	Lynn Haven, FL	09/16/05	09/13/05
57977	Carolina Mills, Inc. (Comp)	Maiden, NC	09/16/05	09/15/05
57978	B.A.G. Corp. (State)	Savoy, TX	09/16/05	09/15/05

[FR Doc. E5–5480 Filed 10–5–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than October 17, 2005.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than October 17, 2005.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 20th day of September 2005.

Timothy Sullivan,

Director, Division of Trade Adjustment Assistance.

APPENDIX

[Petitions instituted between 09/06/2005 and 09/09/2005]

Date of TA–W petition	Subject firm (petitioners)	Location	Date of institution
57,888, 08/25/2005	Pentair Pump (UAW)	Ashland, OH	09/06/2005
57,889, 09/06/2005	Telex Communications (State)	Blue Earth, MN	09/06/2005
57,890, 09/01/2005	Pilowtex Corporation (Comp)	Kannapolis, NC	09/06/2005
57,891, 08/26/2005	Teradyne, Inc. (Comp)	San Jose, CA	09/06/2005
57,892, 08/23/2005	Cardinal Health (State)	El Paso, TX	09/07/2005
57,893, 08/31/2005	Century Technology, Inc. (Comp)	So. San Francis, CA	09/07/2005
57,894, 08/31/2005	New Fortune (Comp)	Oakland, CA	09/07/2005
57,895, 08/31/2005	JD Fine and Company (NPC)	Concord, CA	09/07/2005
57,896, 09/02/2005	Cranford Woodcarving, Inc. (Wkrs)	Hickory, NC	09/07/2005
57,897, 08/31/2005	Nypro Carolina (Comp)	Graham, NC	09/07/2005
57,898, 09/06/2005	BESI, Inc. (Comp)	Vevay, IN	09/07/2005

APPENDIX—Continued

[Petitions instituted between 09/06/2005 and 09/09/2005]

Date of TA–W petition	Subject firm (petitioners)	Location	Date of institution
57,899, 09/07/2005	Janef, Inc. (Comp)	Old Forge, PA	09/07/2005
57,900, 09/07/2005	Tree Island Wire USA (UE)	Walnut, CA	09/08/2005
57,901, 09/08/2005	Barbett Business (State)	Irvine, CA	09/08/2005
57,902, 09/07/2005	Xantrex Technology, Inc. (Wkrs)	Arlington, WA	09/08/2005
57,903, 08/25/2005	Hewlett Packard (State)	San Diego, CA	09/08/2005
57,904, 09/07/2005	Luhr Jensen and Sons, Inc. (Comp)	Hood River, OR	09/08/2005
57,905, 08/26/2005	Compass Group (Wkrs)	Morrison, TN	09/08/2005
57,906, 08/29/2005	Flexsteel (Wkrs)	Dubuque, IA	09/08/2005
57,907, 09/08/2005	JBL Resources (Comp)	Rockford, MI	09/09/2005
57,908, 09/08/2005	Casair, Inc. (Comp)	Stanton, MI	09/09/2005
57,909, 09/08/2005	K Force, Inc. (Comp)	Grand Rapids, MI	09/09/2005
57,910, 09/08/2005	Manpower (Comp)	Greenville, MI	09/09/2005
57,911, 09/08/2005	Select Resources (Comp)	Grandville, MI	09/09/2005
57,912, 09/08/2005	Securitas Services (Comp)	Grand Rapids, MI	09/09/2005
57,913, 09/08/2005	Canteen Services (Comp)	Belmont, MI	09/09/2005
57,914, 09/07/2005	Honeywell (Wkrs)	Columbia, SC	09/09/2005
57,915, 08/29/2005	ICU Medical (Wkrs)	Vernon, CT	09/09/2005
57,916, 09/08/2005	GTP Greenville, Inc. (Comp)	Greenville, SC	09/09/2005
57,917, 09/08/2005	Ultra Clean Technology (State)	Menlo Park, CA	09/09/2005
57,918, 09/07/2005	Williams Wood Carving, Inc. (Comp)	Hickory, NC	09/09/2005
57,919, 09/08/2005	Sterling Printing, Inc. (Wkrs)	Thomasville, NC	09/09/2005
57,920, 09/18/2005	PMI, Phoenix Metallurgical, Inc. (Comp)	Hopedale, MA	09/09/2005

[FR Doc. E5–5479 Filed 10–5–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–57,430]

Springs Industries, Inc.; Creative Products Group, Rock Hill, SC; Notice of Revised Determination on Reconsideration

By letter dated August 31, 2005, a company official requested administrative reconsideration of the Department's negative determination for Trade Adjustment Assistance (TAA) and Alternative Trade Adjustment Assistance (ATAA) for workers of the subject facility. Workers produce finished fabrics packaged for home sewing craft stores and are not separately identifiable by product line. The petition is dated June 21, 2005.

The negative determination was based on the finding of no separations, actual or threatened, during the relevant period. The denial was issued on August 1, 2005 and published in the **Federal Register** on August 26, 2005 (70 FR 50411).

The investigation revealed that the subject facility's employment levels during January through May 2005 increased from January through May 2004 levels, that the subject company's overall sales and production levels increased during January through May 2005 from January through May 2004 levels, and that the subject company's imports of finished fabrics packaged for home sewing craft stores increased during January through May 2005 from January through May 2004 levels.

During the reconsideration investigation, the company official provided corrected information to reflect decreased employment and production levels during the relevant period and increased import levels of finished fabrics packaged for home sewing craft stores during the relevant time period.

The initial investigation also revealed that all criteria for alternative trade adjustment assistance have been met. A significant number or proportion of the worker group are age fifty years or over and workers possess skills that are not easily transferable. Competitive conditions within the industry are adverse.

Conclusion

After careful review of the additional facts obtained on reconsideration, I conclude that increased imports of finished fabrics packaged for home sewing craft stores contributed importantly to worker separations at the subject firm. In accordance with the provisions of the Act, I make the following certification:

• ''All workers of Spring Industries, Inc., Creative Products Group, Rock Hill, South Carolina, who became totally or partially separated from employment on or after June 21, 2004, through two years from the date of this certification, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.''

Signed in Washington, DC this 27th day of September 2005.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–5482 Filed 10–5–05; 8:45 am

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Summary of Decisions Granting in Whole or in Part Petitions for Modification

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Notice of affirmative decisions issued by the Administrators for Coal Mine Safety and Health and Metal and Nonmetal Mine Safety and Health on petitions for modification of the application of mandatory safety standards.

SUMMARY: Under section 101 of the Federal Mine Safety and Health Act of 1977, the Secretary of Labor (Secretary) may allow the modification of the application of a mandatory safety standard to a mine if the Secretary determines either that an alternate method exists at a specific mine that will guarantee no less protection for the miners affected than that provided by

the standard, or that the application of the standard at a specific mine will result in a diminution of safety to the affected miners.

Final decisions on these petitions are based on the petitioner's statements, comments and information submitted by interested persons, and a field investigation of the conditions at the mine. As designee of the Secretary, we have granted or partially granted the requests for modification listed below. In some instances, the decisions are conditioned upon compliance with stipulations stated in the decision. The term FR Notice appears in the list of affirmative decisions below. The term refers to the **Federal Register** volume and page where we published a notice of the filing of the petition for modification.

FOR FURTHER INFORMATION CONTACT: Petitions and copies of the final decisions are available for examination by the public in the Office of Standards, Regulations, and Variances, MSHA, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209. For further information contact Barbara Barron at 202–693–9447.

Dated at Arlington, Virginia, this 30th day of September 2005.

Rebecca J. Smith,

Acting Director, Office of Standards, Regulations, and Variances.

Affirmative Decisions on Petitions for Modification

Docket No.: M–2004–045–C.
FR Notice: 69 FR 64110.
Petitioner: Consolidation Coal Company.
Regulation Affected: 30 CFR 75.364(b).
Summary of Findings: Petitioner's proposal is to establish checkpoint numbers B–CK–10, B–CK–11, B–CK–12, and B–CK–13 to measure the quantity and quality of air in certain areas of the return aircourse due to deteriorating roof conditions. The petitioner proposes to maintain the checkpoints in a safe condition at all times; have a certified person test for methane and the quantity and quality of air at each checkpoint on a weekly basis; and place his/her initials and date in a record book kept on the surface of the mine and on a date board at the checkpoint sites. This is considered an acceptable alternative method for the Blacksville No. 2 Mine. The petition for modification is granted for the examination of approximately 1,200 feet of unsafe-to-travel return aircourse, from the regulator inby the 1½ East Seals over the overcasts of Wana Mains to Wana Air Shaft for the Blacksville No. 2 Mine with conditions.

Docket No.: M–2004–052–C.
FR Notice: 69 FR 78047.
Petitioner: Cumberland Coal Resources, LP.
Regulation Affected: 30 CFR 75.364(b)(1).
Summary of Findings: Petitioner's proposal is to establish air monitoring stations at a sump in an intake airway in lieu of traveling the entry in its entirety because of a water collection sump that was constructed in the intake aircourse and is approximately 15 to 20 feet deep and 600 feet in length, known as the No. 7 Main Sump, located between crosscuts 46 and 51 in the No. 5 entry of the East Mains. The air course is isolated by stoppings and is subject to weekly examinations under 30 CFR 75.364(b)(1), and the roof and ribs in the sump area have been supported with supplemental support. The petitioner proposes to establish evaluation points at the 47 and 51 crosscuts. This is considered an acceptable alternative method for the Cumberland Mine. The petition for modification is granted for evaluation of the intake aircourse segment (approximately 600 feet) known as the No. 7 Main Sump Area for the Cumberland Mine with conditions.

Docket No.: M–2005–001–C.
FR Notice: 70 FR 3566.
Petitioner: Consol Pennsylvania Coal Company.
Regulation Affected: 30 CFR 75.364(b)(2).
Summary of Findings: Petitioner's proposal is to establish monitoring stations MS #1, MS #2, and MS #3 in the affected area of the aircourse and have a certain person examine the stations on a weekly basis to determine the quantity and quality of air entering and exiting the stations. The petitioner proposes to measure the air quality using an MSHA approved hand-held methane and oxygen meter, and the examiner will record their initials, the date, and time of examinations on a date board maintained at each monitoring station and in a book kept on the surface. This is considered an acceptable alternative method for the Enlow Fork Mine. The petition for modification is granted for the examination of approximately 1,200 feet of unsafe-to-travel return aircourse from the 1 West No. 1 Seal to two crosscuts inby the Portal Shaft bottom for the Enlow Fork Mine with conditions.

Docket No.: M–2005–020–C.
FR Notice: 70 FR 19506.
Petitioner: Chestnut Coal Company.
Regulation Affected: 75.311(b)(2).
Summary of Findings: Petitioner's proposal is that electrical circuits entering the underground mine remain energized to the mine's de-watering pumps while the mine ventilation fan is intentionally stopped during idle shifts while no miners are underground. The petitioner alleges that anthracite mines are small, employing five or fewer miners, with very low production; that there is little or no methane liberation; and that due to the steep pitch of the coal seam, natural ventilation occurs through cracks and breaches to the surface, which would dissipate any methane. The petitioner further alleges that continuous operation of the main fan would result in a hazardous condition during colder months due to water freezing in the intake haulage slope, creating ice accumulations that must be manually removed. By allowing the fan to be intentionally stopped, the natural air current will be warmed and prevent freezing. The mine's pumping system typically consists of a submersible pump located below the water level in the intake haulage slope sump and a centrifugal pump located in the intake haulage slope above the active gangway level. The pumps are started and shut off by a set of electrode switches located in the sump that detects the water level. This is considered an acceptable alternative method for the No. 10 Slope Mine. The petition for modification is granted to permit the electrical circuits entering the underground mine to remain energized to the mine's de-watering pumps while the mine ventilation fan is intentionally stopped during idle shifts when no miners are underground for the No. 10 Slope Mine with conditions.

Docket No.: M–2005–021–C.
FR Notice: 70 FR 19506.
Petitioner: Six M Coal Company.
Regulation Affected: 75.335(a)(1).
Summary of Findings: Petitioner's proposal is to construct seals from wooden materials of moderate size and weight that would be designed to withstand a static horizontal pressure in the range of 10 psi, and install a sampling tube only in the monkey (higher elevation) seal. The petitioner asserts that because of the pitch of anthracite veins, concrete blocks are difficult to use and expose miners to safety hazards during transport. The petitioner cites the low level of explosibility of anthracite coal dust and the minimal potential for either an accumulation of methane in previously mined pitching veins or an ignition source in the gob area as justification for the proposed design criterion. This is considered an acceptable alternative method for the No. 1 Slope Mine. The petition for modification is granted for seals installed in the No. 1 Slope Mine with conditions.

Docket No.: M–2005–022–C.
FR Notice: 70 FR 19506.
Petitioner: Consolidation Coal Company.
Regulation Affected: 30 CFR 75.503 [18.35 of Part 18].
Summary of Findings: Petitioner's proposal is to use trailing cables with a maximum length 1,000 feet for supplying power to permissible equipment used in the continuous mining section of the Blacksville No. 2 Mine. This is considered an acceptable alternative method for the Blacksville No. 2 Mine. The petition for modification is granted for the trailing cables supplying three-phase, 995-volt power to continuous mining machines and trailing cables supplying three-phase, 575-volt power to loading machines, shuttle cars, roof bolters, section ventilation fans, and de-gas drills for the Blacksville No. 2 Mine with conditions.

Docket No.: M–2005–029–C.
FR Notice: 70 FR 22376.
Petitioner: Parkwood Resources, Inc.
Regulation Affected: 30 CFR 75.1100–2(e)(2).
Summary of Findings: Petitioner's proposal is to use two (2) fire extinguishers or one fire extinguisher of twice the required capacity at all temporary electrical installations in lieu of using one fire extinguisher and 240 pounds of rock dust. This is considered an acceptable alternative method for the Cherry Tree Mine. The petition for modification is granted for temporary electrical installations, provided the Petitioner maintains two portable fire extinguishers having at least the minimum capacity specified for a portable fire extinguisher in 30 CFR 75.1100–1(e) at each of the temporary electrical installations at the Cherry Tree Mine with conditions.

Docket No.: M–2005–036–C.
FR Notice: 70 CFR 32379.
Petitioner: Hopkins County Coal, LLC.
Regulation Affected: 30 CFR 75.1101–1(b).
Summary of Findings: Petitioner's proposal is to use an alternative method of compliance in lieu of providing blow-off dust covers for deluge-type water spray nozzles. The petitioner proposes to have a certified person trained in specific testing procedures to the deluge-type water pray fire suppression systems at each belt drive conduct a visual examination of each deluge-type water spray fire-suppression system; conduct a functional test of the deluge-type water spray fire suppression systems to check for proper performance, and record the results of the examination in a book that will be kept on the surface and made available to the authorized representative of the Secretary. This is considered an acceptable alternative method for the Elk Creek Mine. The petition for modification is granted for the deluge-type water spray systems installed for nozzles in the Elk Creek Mine with conditions.

Docket No.: M–2005–037–C.
FR Notice: 70 FR 32379.
Petitioner: Bridger Coal Company.
Regulation Affected: 30 CFR 75.1101–8.
Summary of Findings: Petitioner's proposal is to use a water sprinkler system that will consist of a single overhead pipe system with automatic sprinklers located no more than 10 feet apart so that the water discharged from the sprinklers will cover 50 feet of fire-resistant belt, or 150 feet of nonfire-resistant belt, adjacent to the belt drive. The petitioner proposes to have the sprinkler located not more than 10 feet apart so that the water discharged from the sprinkler(s) will cover the drive motor(s), belt take-up, electrical controls, and gear reducing unit for each belt drive, and the sprinkler system will use either pendant or upright type sprinkler heads. This is considered an acceptable alternative method for the Bridger Underground Mine. The petition for modification is granted for the Bridger Underground Mine with conditions.

Docket No.: M–2005–038–C.
FR Notice: 70 FR 32379.
Petitioner: Alfred Brown Coal Company.
Regulation Affected: 30 CFR 75.1100–2(a)(2).
Summary of Findings: Petitioner's proposal is to use two (2) portable fire extinguishers near the slope bottom and an additional portable fire extinguisher within 500 feet of the working face for equivalent fire protection at the 7 Ft. Slope Mine. This is considered an acceptable alternative method for the 7 Ft. Slope Mine. The petition for modification is granted for firefighting equipment in the working section for the 7 Ft. Slope Mine with conditions.

[FR Doc. 05–20081 Filed 10–5–05; 8:45 am]
BILLING CODE 4510–43–P

LEGAL SERVICES CORPORATION

Sunshine Act Meeting of the Board of Directors

TIME AND DATE: The Board of Directors of the Legal Services Corporation will meet on October 11, 2005 via conference call. The meeting will begin at 4 p.m., and continue until conclusion of the Board's agenda.

LOCATION: 3333 K Street, NW., Washington, DC 20007, 3rd Floor Conference Room.

STATUS OF MEETING: Open. Directors will participate by telephone conference in such a manner as to enable interested members of the public to hear and identify all persons participating in the meeting. Members of the public wishing to observe the meeting may do so by joining participating staff at the location indicated above.

MATTERS TO BE CONSIDERED: 1. Approval of the agenda.
2. Consider and act on A Report of the Legal Services Corporation, *Documenting the Justice Gap in America.*
3. Consider and act on other business.
4. Public comment.

FOR FURTHER INFORMATION CONTACT: Patricia Batie, Manager of Board Operations, at (202) 295–1500.

SPECIAL NEEDS: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Patricia Batie at (202) 295–1500.

Dated: October 4, 2005.

Victor M. Fortuno,
Vice President for Legal Affairs, General Counsel & Corporate Secretary.

[FR Doc. 05–20192 Filed 10–4–05; 12:10 pm]
BILLING CODE 7050–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice.

SUMMARY: NARA is giving public notice that the agency has submitted to OMB for approval the information collection described in this notice. The public is invited to comment on the proposed information collection pursuant to the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted to OMB at the address below on or before November 7, 2005 to be assured of consideration.

ADDRESSES: Send comments to Desk Officer for NARA, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5167.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information collection and supporting statement should be directed to Tamee Fechhelm at telephone number 301–837–1694 or fax number 301–837–3213.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13), NARA invites the general public and other Federal agencies to comment on proposed information collections. NARA published a notice of proposed collection for this information collection on April 7, 2005 (70 FR 17720 and 17721). No comments were received. NARA has submitted the described information collection to OMB for approval.

In response to this notice, comments and suggestions should address one or more of the following points: (a) Whether the proposed information collection is necessary for the proper performance of the functions of NARA; (b) the accuracy of NARA's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of information technology; and (e) whether small businesses are affected by this collection. In this notice, NARA is soliciting comments concerning the following information collection:

Title: Volunteer Service Application Form.

OMB number: 3095–0060.

Agency form number: NA Form 6045.

Type of review: Regular.

Affected public: Individuals or households.

Estimated number of respondents: 2,300.

Estimated time per response: 15 minutes.

Frequency of response: On occasion.

Estimated total annual burden hours: 575 hours.

Abstract: NARA uses volunteer resources to enhance its services to the public and to further its mission of providing ready access to essential evidence. Volunteers assist in outreach and public programs and provide technical and research support for administrative, archival, library, and curatorial staff. NARA needs a standard way to recruit volunteers and assess the qualifications of potential volunteers. The NA Form 6045, Volunteer Service Application Form, will be used by members of the public to signal their interest in being a NARA volunteer and to identify their qualifications for this work.

Dated: September 29, 2005.

Shelly L. Myers,

Deputy Chief Information Officer.

[FR Doc. 05–20114 Filed 10–5–05; 8:45 am]

BILLING CODE 7515–01–U

NATIONAL SCIENCE FOUNDATION

Committee on Strategy and Budget (CSB) Meeting

AGENCY HOLDING MEETING: National Science Board.

DATE AND TIME: October 11, 2005, 3 p.m.–3:45 p.m. (ET).

PLACE: National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Public Meeting Room 220.

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Open Session (3 p.m.–3:45 p.m.)

Discussion of CBS Input to the 2020 Vision for NSF Document.

For information contact: Dr. Michael P. Crosby, Executive Officer and NSB Office Director, (703) 292–7000, *http://www.nsf.gov/nsb.*

Michael P. Crosby,

Executive Officer and NSB Office Director.

[FR Doc. 05–20159 Filed 10–3–05; 4:06 pm]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Proposal Review Panel for Materials Research; Sunshine Act Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463 as amended), the National Science Foundation announces the following meeting:

NAME: Proposal Review Panel for Materials Research #1203.

DATES AND TIMES: November 15, 2005; 7:45 a.m.–9 p.m. (open 7:45–11:45, 12:45–4:30, 6–7; closed 4:30–6); November 16, 2005; 8 a.m.–4 p.m. (open 9–10:15).

PLACE: University of Alabama, Tuscaloosa, AL.

TYPE OF MEETING: Part Open.

CONTACT PERSON: Dr. Ulrich Strom, Program Director, Materials Research Science and Engineering Centers, Division of Materials Research, Room 1065, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone (703) 292–4938.

PURPOSE OF MEETING: To provide advice and recommendations concerning progress of Materials Research Science and Engineering Center.

AGENDA:

November 15, 2005—Closed to brief site visit panel.

November 16, 2005—Open for Directors overview of Materials Research Science and Engineering Center and presentations. Closed to review and evaluate progress of Materials Research Science and Engineering Center.

REASON FOR CLOSING: The work being reviewed may include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552 b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: October 4, 2005.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 05–20275 Filed 10–4–05; 2:40 pm]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–188]

Kansas State University; Notice of Acceptance for Docketing of the Application and Notice of Opportunity for Hearing Regarding Renewal of Kansas State University Nuclear Reactor Facility; Facility License No. R–88 for an Additional 20-Year Period

The Nuclear Regulatory Commission (NRC or the Commission) is considering an application for the renewal of Facility License No. R–88, which authorizes the Kansas State University (KSU) (the licensee) to operate the TRIGA Mark II Nuclear Reactor Facility at 1,250 kilowatts thermal power. The renewed license would authorize the applicant to operate the KSU Research Reactor for an additional 20-years beyond the period specified in the current license. The current license for the KSU Research Reactor expired on October 16, 2002.

On September 12, 2002, and supplemented on December 22, 2004 and July 6, 2005, the Commission's staff received an application from KSU filed pursuant to 10 CFR 50.51(a), to renew Facility License No. R–88 for the KSU Research Reactor. A Notice of Receipt and Availability of the license renewal application, ''Notice of License Renewal

Application for Facility Operating License; Kansas State University,'' was published in the **Federal Register** on October 11, 2002 (67 FR 63457). Because the license renewal application was timely filed under 10 CFR 2.109, the license will not be deemed to have expired until the license renewal application has been finally determined.

The Commission's staff has determined that KSU has submitted sufficient information in accordance with 10 CFR 50.33 and 50.34 that the application is acceptable for docketing. The current Docket No. 50–188 for Facility License No. R–88, will be retained. The docketing of the renewal application does not preclude requesting additional information as the review proceeds, nor does it predict whether the Commission will grant or deny the application. Prior to a decision to renew the license, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations.

Within thirty (30) days after the date of publication of this **Federal Register** Notice, the applicant may file a request for a hearing, and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene with respect to the renewal of the license. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.309, which is available at the Commission's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland 20852 and is accessible from the Agency Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr*. Persons who do not have access to the NRC web site or who encounter problems in accessing the documents located in the Electronic Reading Room should contact the NRC's PDR reference staff at 1–800–397–4209, or by e-mail at *pdr@nrc.gov*. If a request for a hearing or a petition for leave to intervene is filed within the 30-day period, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order. In the event that no request for a hearing or petition for leave to intervene is filed within the 30-day period, the NRC may, upon completion of its evaluations and upon making the findings required under 10 CFR parts 50 and 51, renew the license without further notice.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with the particular interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition must specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the requestor's/petitioner's right under the Atomic Energy Act to be made a party to the proceeding; (2) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also set forth the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the requestor/petitioner shall provide a brief explanation of the bases of each contention and a concise statement of the alleged facts or the expert opinion that supports the contention on which the requestor/petitioner intends to rely in proving the contention at the hearing. The requestor/petitioner must also provide references to those specific sources and documents of which the requestor/petitioner is aware and on which the requestor/petitioner intends to rely to establish those facts or expert opinion. The requestor/petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact.[1] Contentions shall be limited to matters within the scope of the action under consideration. The contention must be one that, if proven, would entitle the requestor/petitioner to relief. A requestor/petitioner who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Each contention shall be given a separate numeric or alpha designation within one of the following groups:

1. Technical—primarily concerns/issues relating to technical and/or health and safety matters discussed or referenced in the applicant's safety analysis for the KSU Research Reactor license renewal application.

2. Environmental—primarily concerns issues relating to matters discussed or referenced in the Environmental Report for the license renewal application.

3. Miscellaneous—does not fall into one of the categories outlined above.

As specified in 10 CFR 2.309, if two or more requestors/petitioners seek to co-sponsor a contention, the requestors/petitioners shall jointly designate a representative who shall have the authority to act for the requestors/petitioners with respect to that contention. If a requestor/petitioner seeks to adopt the contention of another sponsoring requestor/petitioner, the requestor/petitioner who seeks to adopt the contention must either agree that the sponsoring requestor/petitioner shall act as the representative with respect to that contention, or jointly designate with the sponsoring requestor/petitioner a representative who shall have the authority to act for the requestors/petitioners with respect to that contention.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing. A request for a hearing or a petition for leave to intervene must be filed by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; (2) courier, express mail, and expedited delivery services: Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff; (3) E-mail addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, *HEARINGDOCKET@NRC.GOV*; or

(4) facsimile transmission addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC, Attention: Rulemakings and Adjudications Staff at 301–415–1101, verification number is 301–415–1966. A copy of the request for hearing and petition for leave to intervene must also be sent to the Office of the General Counsel, U.S. Nuclear

[1] To the extent that the applications contain attachments and supporting documents that are not publicly available because they are asserted to contain safeguards or proprietary information, petitioners desiring access to this information should contact the applicant or applicants's counsel and discuss the need for a protective order.

Regulatory Commission, Washington, DC 20555–0001, and it is requested that copies be transmitted either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov*. A copy of the request for hearing and petition for leave to intervene should also be sent to the licensee. The licensee's contact for this is Mr. P. Michael Whaley, Nuclear Reactor Manager, Kansas State University, 112 Ward Hall, Manhattan, KS 66506–2506.

Non-timely requests and/or petitions and contentions will not be entertained absent a determination by the Commission, the presiding officer, or the Atomic Safety and Licensing Board that the petition, request and/or contentions should be granted based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii).

Detailed guidance which the NRC uses to review applications for the renewal of non-power reactor licenses can be found in the document NUREG–1537, entitled ''Guidelines for Preparing and Reviewing Applications for the Licensing of Non-Power Reactors,'' can be obtained from the Commission?s PDR. The NRC maintains an Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The detailed review guidance (NUREG–1537) may be accessed through the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/reading-rm/adams.html* under ADAMS accession number ML042430055 for part one and ML042430048 for part two. Copies of the application to renew the facility license for the KSU Research Reactor are available for public inspection at the Commission?s PDR, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, 20855–2738. The initial application also may be accessed through the NRC's Public Electronic Reading Room, at the address mentioned above, under ADAMS accession number ML022630083. The revised application may be accessed under ADAMS accession number ML052620181. Persons who do not have access to ADAMS, or if there are problems in accessing the documents located in ADAMS, may contact the NRC Public Document Room Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 28th day of September 2005.

For the Nuclear Regulatory Commission.

Brian E. Thomas,

Section Chief, Research and Test Reactors Section, New, Research and Test Reactors Program, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.

[FR Doc. E5–5474 Filed 10–5–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–272 and 50–311]

PSEG Nuclear, LLC; Exelon Generation Company, LLC; Salem Nuclear Generating Station, Unit Nos. 1 and 2; Notice of Partial Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (NRC or the Commission) has granted the request of PSEG Nuclear LLC (PSEG), on behalf or PSEG and Exelon Generation Company, LLC (the licensees) to withdraw a portion of its April 15, 2004, application and the August 11, 2004, and August 11, 2005, supplements for proposed amendments to Facility Operating License Nos. DPR–70 and DPR–75 for the Salem Nuclear Generating Station, Unit Nos. 1 and 2, located in Salem County, New Jersey.

One of the proposed changes would have permitted a modification to the Salem, Unit No. 1, containment cooling system. Specifically, PSEG proposed to install a new closed-loop chilled water system to supply cooling water to the containment fan cooling units during normal operation. The emergency containment cooling water system would remain the safety-related source of cooling water for postulated accidents. The request involved changes to the system configuration, revisions to the analysis of containment temperature and pressure following a design-basis event, and associated changes to the Technical Specifications. The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on October 12, 2004 (69 FR 60684). However, by letter dated August 11, 2005, PSEG withdrew the above-referenced proposed change.

For further details with respect to this action, see the application for amendment dated April 15, 2004, as supplemented by letters dated August 11, 2004, and August 11, 2005. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area 01 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly-available records will be accessible electronically from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams/html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR reference staff by telephone at 1–800–397–4209, or 301–415–4737, or by e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 30th day of September 2005.

For the Nuclear Regulatory Commission.

Stewart N. Bailey,

Sr. Project Manager, Section 2, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. E5–5473 Filed 10–5–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–220 and 50–410]

Nine Mile Point Nuclear Station, LLC; Nine Mile Point Nuclear Station, Units 1 and 2; Notice of Availability of the Draft Supplement 24 to the Generic Environmental Impact Statement for License Renewal of Nuclear Plants, and Public Meeting for the License Renewal of Nine Mile Point Nuclear Station, Units 1 and 2

Notice is hereby given that the U.S. Nuclear Regulatory Commission (NRC, Commission) has published a draft plant-specific supplement to the Generic Environmental Impact Statement for License Renewal of Nuclear Plants (GEIS), NUREG–1437, regarding the renewal of operating licenses DPR–63 and NPF–69 for an additional 20 years of operation for the Nine Mile Point Nuclear Station, Units 1 and 2 (Nine Mile Point). Nine Mile Point is located in northern New York on the shore of Lake Ontario, approximately 5 miles northeast of Oswego, New York, 36 miles north-northeast of Syracuse, New York, and 65 miles east of Rochester, New York. Possible alternatives to the proposed action (license renewal) include no action and reasonable alternative energy sources.

The draft Supplement 24 to the GEIS is publicly available at the NRC Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, or from the NRC's Agencywide Documents

Access and Management System (ADAMS). The ADAMS Public Electronic Reading Room is accessible at *http://www.nrc.gov/reading-rm/adams/web-based.html.* The accession number for the draft Supplement 24 to the GEIS is ML052720075. Persons who do not have access to ADAMS, or who encounter problems in accessing the documents located in ADAMS, should contact the NRC's Public Document Room Reference staff by telephone at 1–800–397–4209, or 301–415–4737, or by e-mail at *pdr@nrc.gov.* In addition, the Penfield Library, located at State University of New York, Oswego, New York 13126, has agreed to make the draft supplement to the GEIS available for public inspection.

Any interested party may submit comments on the draft supplement to the GEIS for consideration by the NRC staff. To be certain of consideration, comments on the draft supplement to the GEIS and the proposed action must be received by December 22, 2005. Comments received after the due date will be considered if it is practical to do so, but the NRC staff is able to assure consideration only for comments received on or before this date. Written comments on the draft supplement to the GEIS should be sent to: Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, Mailstop T–6D59, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Comments may be hand-delivered to the NRC at 11545 Rockville Pike, Room T–6D59, Rockville, Maryland, between 7:30 a.m. and 4:15 p.m. on Federal workdays. Electronic comments may be submitted to the NRC by e-mail at *NineMilePointEIS@nrc.gov.* All comments received by the Commission, including those made by Federal, State, local agencies, Native American Tribes, or other interested persons, will be made available electronically at the Commission's PDR in Rockville, Maryland, and through ADAMS.

The NRC staff will hold a public meeting to present an overview of the draft plant-specific supplement to the GEIS and to accept public comments on the document. The public meeting will be held on November 17, 2005, at the Town of Scriba Conference Room, 42 Creamery Road, Oswego, New York 13126. There will be two sessions to accommodate interested parties. The first session will commence at 1:30 p.m. and will continue until 4:30 p.m. The second session will commence at 7 p.m. and will continue until 10 p.m. Both meetings will be transcribed and will include: (1) A presentation of the contents of the draft plant-specific supplement to the GEIS, and (2) the opportunity for interested government agencies, organizations, and individuals to provide comments on the draft report. Additionally, the NRC staff will host informal discussions one hour prior to the start of each session at the same location. No comments on the draft supplement to the GEIS will be accepted during the informal discussions. To be considered, comments must be provided either at the transcribed public meeting or in writing. Persons may pre-register to attend or present oral comments at the meeting by contacting Ms. Leslie C. Fields, the NRC Environmental Project Manager at 1–800–368–5642, extension 1186, or by e-mail at *NineMilePointEIS@nrc.gov* no later than November 8, 2005. Members of the public may also register to provide oral comments within 15 minutes of the start of each session. Individual, oral comments may be limited by the time available, depending on the number of persons who register. If special equipment or accommodations are needed to attend or present information at the public meeting, the need should be brought to Ms. Fields's attention no later than November 8, 2005, to provide the NRC staff adequate notice to determine whether the request can be accommodated.

FOR FURTHER INFORMATION, CONTACT: Ms. Leslie C. Fields, License Renewal and Environmental Impacts Program, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Mail Stop O–11F1, Washington, DC 20555–0001. Ms. Fields may be contacted at the aforementioned telephone number or e-mail address.

Dated at Rockville, Maryland, this 29th day of September, 2005.

For the Nuclear Regulatory Commission.

Jacob I. Zimmerman,

Acting Program Director, License Renewal and Environmental Impacts Program, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.

[FR Doc. E5–5471 Filed 10–5–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Draft Regulatory Guide: Issuance, Availability

The U.S. Nuclear Regulatory Commission (NRC) has issued for public comment a draft revision of an existing guide in the agency's Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods that are acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques that the staff uses in evaluating specific problems or postulated accidents, and data that the staff needs in its review of applications for permits and licenses.

The draft Revision 1 of Regulatory Guide 8.38, entitled ''Control of Access to High and Very High Radiation Areas in Nuclear Power Plants,'' is temporarily identified by its task number, DG–8028, which should be mentioned in all related correspondence. Like its predecessors, this proposed revision describes an acceptable program for implementing the requirements of Title 10, Part 20, of the *Code of Federal Regulations* (10 CFR Part 20), ''Standards for Protection Against Radiation.'' In particular, 10 CFR 20.1101, ''Radiation Protection Programs,'' requires licensees to develop and implement a radiation protection program appropriate to the scope of licensed activities and potential hazards. To augment that requirement, 10 CFR 20.2102, ''Records of Radiation Protection Programs,'' requires licensees to document those radiation protection programs. An important aspect of such programs at nuclear power plants is the institution of a system of controls that includes procedures, training, audits, and physical barriers to protect workers against unplanned exposures in high and very high radiation areas. Toward that end, 10 CFR 20.1601 provides specific requirements applicable to controlling access to high radiation areas, while 10 CFR 20.1602 provides additional requirements to prevent unauthorized or inadvertent entry into very high radiation areas. Appendix A to the proposed revised guide augments this guidance with recommended procedures for good operating practices for underwater diving operations in high and very high radiation areas. In addition, Appendix B summarizes past experience with very high and potentially very high radiation areas, so that pertinent historical information is readily accessible.

Dose rates in areas of nuclear power plants that are accessible to individuals can vary over several orders of magnitude. High radiation areas, where personnel can receive doses in excess of the regulatory limits in a relatively short time, require special controls. Very high radiation areas require much stricter monitoring and controls, because failure to adequately implement effective radiological controls can result in radiation doses that result in a significant health risk. Thus, it is important that licensees have effective

programs for controlling access to high and very high radiation areas because of the potential for overexposure.

The primary purpose of this proposed revision is to clarify the terminology related to the physical barriers that licensees could use to prevent unauthorized personnel access to high and very high radiation areas. The current version of Regulatory Guide 8.38 uses the term ''inadvertent entry'' with two different connotations. As used in Section 1.5, ''Physical Controls,'' the term was intended to connote ''not a willful violation.'' In several other sections, however, ''inadvertent entry'' was used to mean ''an accidental, or unintended, entry.'' This disparity has led to inconsistent readings of the staff's regulatory position by licensees and other stakeholders. Consequently, in preparing this revision, the NRC staff rewrote Section 1.5 to eliminate the use of the term ''inadvertent entry,'' and provide additional guidance on the acceptability of physical barriers used to control access to high radiation areas.

The staff also revised two additional sections of the guide to explicitly state regulatory positions that are implied in the current version. Section 1.6, ''Shielding,'' is revised to clarify that monitors with local alarms are not necessary where the removal of shielding does not result in dose rates greater than 1,000 mrem/hr (10 mSv/hr) at 30 cm from the source. Also, Section 4.2, ''Materials,'' is revised to clarify that appropriate controls are required when diving operations allow access to high and/or very high radiation areas in the spent fuel pool. In addition, the staff updated Appendix B to include recent references that discuss industry experiences with high and very high radiation areas.

The proposed revision to Regulatory Guide 8.38 does not change previous staff positions. Therefore, this revision does not constitute a backfit, as defined in 10 CFR 50.109.

The NRC staff is soliciting comments on Draft Regulatory Guide DG–8028, and comments may be accompanied by relevant information or supporting data. Please mention DG–8028 in the subject line of your comments. Comments on this draft regulatory guide submitted in writing or in electronic form will be made available to the public in their entirety through the NRC's Agencywide Documents Access and Management System (ADAMS). Personal information will not be removed from your comments. You may submit comments by any of the following methods.

Mail comments to: Rules and Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Email comments to: *NRCREP@nrc.gov*. You may also submit comments via the NRC's rulemaking Web site at *http://ruleforum.llnl.gov*. Address questions about our rulemaking Web site to Carol A. Gallagher (301) 415–5905; e-mail *CAG@nrc.gov*.

Hand-deliver comments to: Rules and Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. on Federal workdays.

Fax comments to: Rules and Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission at (301) 415–5144.

Requests for technical information about Draft Regulatory Guide DG–8028 may be directed to Harriet Karagiannis at (301) 415–6377 or by e-mail to *HXK@nrc.gov*.

Comments would be most helpful if received by December 5, 2005. Comments received after that date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date. Although a time limit is given, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

Electronic copies of the draft regulatory guide are available through the NRC's public Web site under Draft Regulatory Guides in the Regulatory Guides document collection of the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/doc-collections/*. Electronic copies are also available in the NRC's Agencywide Documents Access and Management System (ADAMS) at *http://www.nrc.gov/reading-rm/adams.html*, under Accession #ML052590173. Note, however, that the NRC has temporarily limited public access to ADAMS so that the agency can complete security reviews of publicly available documents and remove potentially sensitive information. Please check the NRC's Web site for updates concerning the resumption of public access to ADAMS.

In addition, regulatory guides are available for inspection at the NRC's Public Document Room (PDR), which is located at 11555 Rockville Pike, Rockville, Maryland; the PDR's mailing address is USNRC PDR, Washington, DC 20555–0001. The PDR can also be reached by telephone at (301) 415–4737 or (800) 397–4205, by fax at (301) 415–3548, and by e-mail to *PDR@nrc.gov*.

Requests for single copies of draft or final guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Reproduction and Distribution Services Section; by e-mail to *DISTRIBUTION@nrc.gov*; or by fax to (301) 415–2289. Telephone requests cannot be accommodated.

Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them. (5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 28th day of September, 2005.

For the Nuclear Regulatory Commission,

Farouk Eltawila,

Director, Division of Systems Analysis and Regulatory Effectiveness, Office of Nuclear Regulatory Research.

[FR Doc. E5–5472 Filed 10–5–05; 8:45 am]

BILLING CODE 7590–01–P

PENSION BENEFIT GUARANTY CORPORATION

Proposed Submission of Information Collection for OMB Review; Comment Request; Notice of Failure To Make Required Contributions

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of intention to request extension of OMB approval.

SUMMARY: The Pension Benefit Guaranty Corporation (PBGC) intends to request that the Office of Management and Budget (OMB) extend approval, under the Paperwork Reduction Act, of the collection of information under Part 4043 of its regulations relating to Notice of Failure to Make Required Contributions (OMB control number 1212–0041; expires January 31, 2006). This notice informs the public of the PBGC's intent and solicits public comment on the collection of information.

DATES: Comments must be submitted by December 5, 2005.

ADDRESSES: Comments may be mailed to the Legislative and Regulatory Department, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026, or delivered to Suite 340 at that address during normal business hours. Comments also may be submitted by e-mail to *paperwork.comments@pbgc.gov*, or by fax to 202–326–4112. The PBGC

will make all comments available on its Web site at *www.pbgc.gov*.

Copies of the collections of information may be obtained without charge by writing to the PBGC's Communications and Public Affairs Department at Suite 240 at the above address or by visiting that office or calling 202–326–4040 during normal business hours. (TTY and TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4040.) The reportable events regulations, forms, and instructions may be accessed on the PBGC's Web site at *www.pbgc.gov*.

FOR FURTHER INFORMATION CONTACT: James L. Beller, Jr., Attorney, Legislative and Regulatory Department, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026, 202–326–4024. (For TTY/TDD users, call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION: Section 302(f) of the Employee Retirement Income Security Act of 1974 (''ERISA'') and section 412(n) of the Internal Revenue Code of 1986 (''Code'') impose a lien in favor of an underfunded single-employer plan that is covered by the termination insurance program if (1) any person fails to make a required payment when due, and (2) the unpaid balance of that payment (including interest), when added to the aggregate unpaid balance of all preceding payments for which payment was not made when due (including interest), exceeds $1 million. (For this purpose, a plan is underfunded if its funded current liability percentage is less than 100 percent.) The lien is upon all property and rights to property belonging to the person or persons who are liable for required contributions (*i.e.*, a contributing sponsor and each member of the controlled group of which that contributing sponsor is a member).

Only the PBGC (or, at its direction, the plan's contributing sponsor or a member of the same controlled group) may perfect and enforce this lien. Therefore, ERISA and the Code require persons committing payment failures to notify the PBGC within 10 days of the due date whenever there is a failure to make a required payment and the total of the unpaid balances (including interest) exceeds $1 million.

PBGC Form 200, Notice of Failure to Make Required Contributions, and related filing instructions, implement the statutory notification requirement. Submission of Form 200 is required by 29 CFR 4043.81.

The collection of information under the regulation has been approved through January 31, 2006, by OMB under control number 1212–0041. The PBGC intends to request that OMB extend approval for another three years. 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 PBGC estimates that it will receive 78 Form 200 filings per year under this collection of information. The PBGC further estimates that the average annual burden of this collection of information is 160.5 hours and $44,132.

The PBGC is soliciting public comments to—

- Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collections of information, including the validity of the methodologies and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collections 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.

Issued in Washington, DC, this 29th day of September, 2005.

Rick Hartt,

Chief Technology Officer, Pension Benefit Guaranty Corporation.

[FR Doc. 05–20140 Filed 10–5–05; 8:45 am]

BILLING CODE 7708–01–P

PENSION BENEFIT GUARANTY CORPORATION

Proposed Submission of Information Collection for OMB Review; Comment Request; Reportable Events

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of intention to request extension of OMB approval.

SUMMARY: The Pension Benefit Guaranty Corporation (PBGC) intends to request that the Office of Management and Budget (OMB) extend approval, under the Paperwork Reduction Act, of collections of information under Part 4043 of its regulations relating to Reportable Events (OMB control number 1212–0013; expires January 31, 2006). This notice informs the public of the PBGC's intent and solicits public comment on the collection of information.

DATES: Comments must be submitted by December 5, 2005.

ADDRESSES: Comments may be mailed to the Legislative and Regulatory Department, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026, or delivered to Suite 340 at that address during normal business hours. Comments also may be submitted by e-mail to *paperwork.comments@pbgc.gov*, or by fax to 202–326–4112. The PBGC will make all comments available on its Web site at *www.pbgc.gov*.

Copies of the collections of information may be obtained without charge by writing to the PBGC's Communications and Public Affairs Department at Suite 240 at the above address or by visiting that office or calling 202–326–4040 during normal business hours. (TTY and TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4040.) The reportable events regulations, forms, and instructions may be accessed on the PBGC's Web site at *www.pbgc.gov*.

FOR FURTHER INFORMATION CONTACT: James L. Beller, Jr., Attorney, Legislative and Regulatory Department, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026, 202–326–4024. (For TTY/TDD users, call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION: Section 4043 of the Employee Retirement Income Security Act of 1974 (ERISA) requires plan administrators and plan sponsors to report certain plan and corporate events to the PBGC. The reporting requirements give the PBGC timely notice of events that indicate plan or employer financial problems. The PBGC uses the information provided in determining what, if any, action it needs to take. For example, the PBGC might need to institute proceedings to terminate the plan (placing it in trusteeship) under section 4042 of ERISA to ensure the continued payment of benefits to plan participants and their beneficiaries or to prevent unreasonable increases in its losses.

The collection of information under the regulation has been approved through January 31, 2006, by OMB under control number 1212–0013. The

PBGC intends to request that OMB extend approval for another three years. 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 PBGC estimates that it will receive 705 reportable events per year under this collection of information. The PBGC further estimates that the average annual burden of this collection of information is 2,974 hours and $817,850.

The PBGC is soliciting public comments to—

- Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collections of information, including the validity of the methodologies and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collections 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.

Issued in Washington, DC, this 29th day of September, 2005.

Rick Hartt,

Chief Technology Officer, Pension Benefit Guaranty Corporation.

[FR Doc. 05–20141 Filed 10–5–05; 8:45 am]

BILLING CODE 7708–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–27107]

Notice of Applications for Deregistration Under Section 8(f) of the Investment Company Act of 1940

September 30, 2005.

The following is a notice of applications for deregistration under section 8(f) of the Investment Company Act of 1940 for the month of September, 2005. A copy of each application may be obtained for a fee at the SEC's Public Reference Branch (tel. (202) 551–5850). An order granting each application will be issued unless the SEC orders a hearing. Interested persons may request a hearing on any application by writing to the SEC's Secretary at the address below and serving the relevant applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 25, 2005, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE.,Washington, DC 20549–9303.

FOR FURTHER INFORMATION CONTACT: Diane L. Titus at (202) 551–6810, SEC, Division of Investment Management, Office of Investment Company Regulation, 100 F Street, NE., Washington, DC 20549–0504.

The Aquinas Funds, Inc. [File No. 811–8122]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On July 8, 2005, applicant transferred its assets to corresponding series of LKCM Funds, based on net asset value. Expenses of $35,457 incurred in connection with the reorganization were paid by Aquinas Investment Advisers, Inc., applicant's investment adviser, and Luther King Capital Management Corporation, the surviving fund's investment adviser.

Filing Date: The application was filed on September 1, 2005.

Applicant's Address: 5310 Harvest Hill Rd., Suite 248, Dallas TX 75230.

AllianceBernstein Capital Reserves [File No. 811–2835]

AllianceBernstein Government Reserves [File No. 811–2889]

AllianceBernstein Municipal Trust [File No. 811–3586]

Summary: Each applicant seeks an order declaring that it has ceased to be an investment company. On June 24, 2005, each applicant made a liquidating distribution to its shareholders, based on net asset value. Applicants incurred no expenses in connection with the liquidations.

Filing Date: The applications were filed on September 9, 2005.

Applicants' Address: 1345 Avenue of the Americas, New York, NY 10105.

BLK Subsidiary Inc. [File No. 811–8453]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On June 30, 2001, applicant made a liquidating distribution to its shareholders, based on net asset value. Applicant incurred no expenses in connection with the liquidation.

Filing Date: The application was filed on August 31, 2005.

Applicant's Address: 100 Bellevue Parkway, Wilmington, DE 19809.

The BlackRock 2001 Term Trust Inc. [File No. 811–6710]

The BlackRock Strategic Term Trust Inc. [File No. 811–6189]

Summary: Each applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On June 29, 2001 and December 30, 2002, respectively, each applicant made a liquidating distribution to its shareholders, based on net asset value. Each applicant incurred $28,000 in expenses in connection with its liquidation.

Filing Date: The applications were filed on August 31, 2005.

Applicants' Address: 100 Bellevue Parkway, Wilmington, DE 19809.

CCMI Funds [File No. 811–6561]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On March 21, 2005, applicant transferred its assets to STI Classic Fund, based on net asset value. Expenses of $212,200 incurred in connection with the reorganization were paid by Trusco Capital Management, Inc., investment adviser of the acquiring fund.

Filing Dates: The application was filed on July 21, 2005 and amended on September 7, 2005.

Applicant's Address: 431 North Pennsylvania St., Indianapolis, IN 46204.

Oppenheimer Select Managers Series [File No. 811–10153]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. Between September 4, 2003 and November 7, 2003, each series of applicant transferred its assets to corresponding series of Oppenheimer Main Street Funds, Inc., Oppenheimer Growth Fund, Oppenheimer Balanced Fund, Oppenheimer Series Fund, Inc. or Oppenheimer MidCap Fund, based on net asset value. Expenses of approximately $210,757 incurred in connection with the reorganization were paid by applicant.

Filing Dates: The application was filed on April 19, 2005, and amended on August 24, 2005.

Applicant's Address: 6803 S. Tucson Way, Centennial, CO 80112.

The BlackRock Target Term Trust Inc. [File No. 811–5657]

The BlackRock 1998 Term Trust Inc. [File No. 811–6284]

The BlackRock 1999 Term Trust Inc. [File No. 811–7312]

Summary: Each applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. By September 28, 2001, each applicant had made a liquidating distribution to its shareholders based on net asset value. Each applicant incurred $28,000 in expenses in connection with the liquidations.

Filing Dates: The applications were filed on January 7, 2002, and amended on August 31, 2005.

Applicants' Address: 100 Bellevue Parkway, Wilmington, DE 19809.

Navellier Variable Insurance Series Fund, Inc. [File No. 811–8079]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On September 26, 2003, the Board of Directors voted to liquidate the applicant. On May 26, 2004, the applicant made liquidating distributions to its shareholders, based on net asset value. Expenses of $60,384.32 incurred in connection with the liquidation were paid by Navellier & Associates, Inc.

Filing Dates: The application was filed on December 8, 2004 and amended and restated on September 13, 2005.

Applicant's Address: One East Liberty, Third Floor, Reno, NV 89501.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. E5–5488 Filed 10–5–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of October 10, 2005:

A Closed Meeting will be held on Tuesday, October 11, 2005 at 2:00 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(5), (7), (9)(B), and (10) and 17 CFR 200.402(a)(5), (7), 9(ii) and (10) permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Nazareth, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matters of the Closed Meeting scheduled for Tuesday, October 11, 2005 will be:

Formal orders of private investigations;

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings of an enforcement nature;

Opinion; and

Amicus consideration

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 551–5400.

Dated: October 3, 2005.

Jonathan G. Katz,

Secretary.

[FR Doc. 05–20182 Filed 10–4–05; 11:27 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–28041]

Filings Under the Public Utility Holding Company Act of 1935, as Amended (''Act'')

September 30, 2005.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by October 21, 2005, to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After October 21, 2005, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Northeast Utilities, et al. (70–9755)

Northeast Utilities (''NU''), a public utility holding company registered under the Act, Building 111–4, One Federal Street, Springfield, Massachusetts 01105; Yankee Energy System, Inc. (''YES''), a public utility holding company subsidiary of NU, exempt from registration under section 3(a)(1) of the Act by rule 2, and Northeast Utilities Service Company, NU's service company subsidiary, 107 Selden Street, Berlin, Connecticut 06037; NU's direct and indirect public utility subsidiaries, The Connecticut Light and Power Company (''CL&P'') and Yankee Gas Services Company (''Yankee Gas''), 107 Selden Street, Berlin, Connecticut 06037, Western Massachusetts Electric Company, Building 111–4, One Federal Street, Springfield, Massachusetts 01105 (''WMECO'' and with CL&P and Yankee Gas, the ''Utility Borrowers''), Public Service Company of New Hampshire, Energy Park, 780 North Commercial Street, Manchester, New Hampshire 03101 (''PSNH''), and Holyoke Water Power Company (''HWP''), 107 Selden Street, Berlin, Connecticut 06037; and NU's direct and indirect nonutility subsidiaries, Northeast Nuclear Energy Company, The Rocky River Realty Company, The Quinnehtuk Company, Properties, Inc., Yankee Energy Financial Services Company, Yankee Energy Services Company, NorConn Properties, Inc., NU Enterprises, Inc., Northeast Generation Company, Northeast Generation Services Company, E. S. Boulos Company, Woods Electrical Company, Inc., Woods Network Services, Inc., Select Energy, Inc., Select Energy New York, Inc., and Mode 1 Communications, Inc., 107 Selden Street, Berlin, Connecticut 06037, and North Atlantic Energy Corporation, North Atlantic Energy

Service Corporation (''NAESC''), Energy Park, 780 North Commercial Street, Manchester, New Hampshire, 03101; and Select Energy Services, Inc., 24 Prime Parkway, Natick, Massachusetts 01760 (all of the above named companies collectively the ''Applicants'') have filed a post-effective amendment to an application/declaration (''Amendment'') under sections 6(a) and 7 of the Act.

Applicants state that by order dated June 30, 2004 (Holding Co. Act Release No. 27870) (''2004 Order''), the Commission granted authority for NU, YES and the Utility Borrowers to issue short-term debt securities, subject to certain conditions. NU was authorized to issue up to an aggregate of $450 million of short-term debt at any one time outstanding through June 30, 2007 (''Authorization Period''). The 2004 Order also authorized continued operation of the NU Money Pool through the Authorization Period, based, in part, on the commitment by NU, YES and the Utility Borrowers that, apart from the securities issued for the purpose of funding money pool operations, no securities would be issued under the authority obtained under the 2004 Order unless: (i) The security to be issued, if rated, is rated investment grade; (ii) all outstanding securities of the issuer that are rated are rated investment grade; and (iii) all outstanding securities of NU and YES that are rated, are rated investment grade (''Investment Grade Conditions''). The 2004 Order also approved a Money Pool borrowing limit for HWP of $10 million.

With this Amendment, the Applicants seek the following authorizations: to increase the amount of short-term debt that NU may incur through the Authorization Period from $450 million to $700 million; to delete the Investment Grade Conditions on issuance of certain securities by NU, YES and the Utility Borrowers; to add NAESC as a participant in the NU Money Pool; and to increase HWP's Money Pool limit from $10 million to $35 million. Applicants state that no further authorizations are being requested by the Amendment and all other terms and conditions in the 2004 Order will remain applicable.

According to the Applicants, management believes that the increase is necessary at this time to continue to support the credit and liquidity requirements of its regulated and competitive businesses. The Applicants also state that NU needs the additional liquidity to meet possible near-term, temporary cash needs, such as cash payments to buy our or buy down certain wholesale contracts, associated with the holding company's previously announced exit from the wholesale competitive energy business. In addition, a number of Select Energy's energy contracts require, according to Applicants, the posting of additional collateral in the form of cash or letters of credit in the event NU's credit ratings were to decline and in increasing amounts dependent upon the severity of the decline. Were NU's unsecured ratings to decline to sub-investment grade, Select Energy states that it could, under its present contracts, be asked to provide, as of March 31, 2005, approximately $500 million of collateral or letters of credit to various unaffiliated counterparties and approximately $154 million to several independent system operators and unaffiliated local distribution companies, which, management states, NU would currently be able to provide. In addition, according to Applicants, Standard and Poor's credit rating agency, has imposed reporting requirements industry-wide for its new liquidity tests. Standard and Poor's liquidity tests demonstrate, according to Applicants, that NU needs additional credit capacity to support its businesses in the event of certain hypothetical adverse developments affecting credit ratings and forward prices of energy commodity products.

According to the Applicants, the external short-term debt which NU is requesting authority to issue may take a variety of forms, including commercial paper and unsecured notes with banks or other institutional lenders under credit facilities that are generally available to borrowers with comparable credit ratings. All short-term debt issued by NU as a result of this Amendment will have maturities of less than one year from the date of issuance. NU states that it will not issue any secured debt.

Commercial paper issued by NU may be issued manually or through The Depository Trust Company in the form of book entry notes in denominations of not less than $50,000 of varying maturities. This commercial paper would typically be sold to dealers at the discount rate prevailing at the date of issuance for commercial paper of comparable quality and maturities sold to commercial paper dealers generally. The Applicants expect that the dealers acquiring the commercial paper will reoffer it at a discount to corporate and institutional investors. The Applicants state that no commercial paper will be issued by NU unless the issuer believes that the effective cost to it will be equal to or less than the effective interest rate at which it could issue short-term notes in an amount at least equal to the principal amount of the commercial paper. The commercial paper will be publicly issued and sold without registration under the Securities Exchange Act of 1933 in reliance upon one or more applicable exemptions from registration under that Act.

According to NU, the effective cost of money on the short-term debt will not exceed competitive market rates available at the time of issuance for securities having the same or reasonably similar terms and conditions issued by companies of comparable credit quality, provided that in no event will the effective cost of capital exceed 300 basis points over the comparable term London Interbank Offered Rate. Issuance expenses will not exceed 5% of the principal amount of the securities. NU states that specific terms of the short-term debt will be determined by NU at the time of issuance but that those terms will comply in all regards to the parameters of financings authorizations set forth in the Amendment. A copy of all new notes or loan agreements executed as a result of the authority requested will be filed under cover of the next quarterly report under rule 24. NU states that, subject to the NU Aggregate Short-term Debt Limit, NU intends to renew and extend outstanding short-term debt as it matures, to refund such short-term debt with other similar short-term debt, to repay such short-term debt or to increase the amount of their short-term debt from time to time through the Authorization Period.

In a recent order issued by the Commission (Pepco Holdings, Inc., Holding Co. Act Release No. 27991, June 30, 2005), the Commission modified the investment grade conditions applicable to the issuance of securities by holding companies and their public utility subsidiaries, including the elimination of investment grade requirements for the issuance of short-term debt. Since the 2004 Order only authorized the issuance of short-term debt and interest rate hedges, the Applicants request that the Commission eliminate the Investment Grade Conditions set forth in the 2004 Order.

According to the Applicants, HWP has embarked on a capital spending program which will require it, among other things, to install additional pollution control equipment at its Mt. Tom generating facility. This program, expected to cost approximately $17 million, plus contingencies and other requirements associated with ongoing remediation of site contamination at Mt. Tom, necessitates an increase in HWP's borrowing capacity. It has no external sources of funds at present and is close

to its authorized Money Pool limit. The Money Pool represents an economic alternative for HWP's short-term funding needs. Applicants request an increase in HWP's Money Pool limit from $10 million to $35 million.

NAESC, which seeks authority to participate in the NU Money Pool, formerly operated the Seabrook Nuclear Station, which was sold in 2002. NAESC currently retains cash against certain future obligations, and Applicants state that NU's cash management system will be enhanced by the addition of NAESC to the NU Money Pool on the terms and conditions set forth in the 2004 Order.

NU states that at all times during the Authorization Period it will maintain common equity (as reflected in the most recent Form 10–K or Form 10–Q filed with the Commission) of at least 30% of its consolidated capitalization (net of securitization debt). The term ''consolidated capitalization'' is defined to include, where applicable, common stock equity (comprised of common stock, additional paid in capital, retained earnings, accumulated other comprehensive income or loss, and/or treasury stock), minority interest, preferred stock, preferred securities, equity linked securities, long-term debt, short-term debt and current maturities (net of securitization debt).

NU states that, as of June 30, 2005, NU's consolidated capitalization (net of securitization debt) consisted of 38.6% common equity, 2.1% preferred stock, 59.3% long-term and short-term debt. When securitization debt (Rate Reduction Bonds) is included, NU's consolidated capitalization as of June 30, 2005, was 30.5% common equity, 1.7% preferred stock and 46.8% debt, 21.0% Rate Reduction Bonds.

The proceeds from the issuance of short-term debt as requested in this Amendment will be used for (i) general corporate purposes, including investments by and capital expenditures of NU and its subsidiaries, including, without limitation, the funding of future investments in exempt wholesale generators (''EWGs''), foreign utility companies (''FUCOs'') (each to the extent permitted under the Act or Commission order), energy-related companies (''Rule 58 Subsidiaries'') to the extent permitted under the Act or Commission order, and exempt telecommunications companies (''ETCs''), (ii) the repayment, redemption, refunding or purchase by NU or any subsidiary of any of its own securities from non-affiliates under rule 42, and (iii) financing working capital requirements of NU and its subsidiaries.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. E5–5475 Filed 10–5–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52533; File No. SR–Amex–2005–085]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Implementation of a Cancellation Fee for Equities and ETFs

September 29, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 20, 2005, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by Amex. On September 23, 2005, Amex filed Amendment No. 1 to the proposed rule change.[3] On September 26, 2005, Amex filed Amendment No. 2 to the proposed rule change.[4] Amex has designated this proposal as one establishing or changing a due, fee, or other charge imposed by Amex under Section 19(b)(3)(A)(ii) of the Act,[5] and Rule 19b–4(f)(2) thereunder,[6] 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 parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Amex proposes to establish a fee based on the number of order cancellations in equities, Exchange Traded Fund Shares and Trust Issued Receipts (hereinafter referred to as ''equities and ETFs'') routed through Amex systems. Below is the text of the proposed rule change, as amended. Proposed new language is *italicized*; proposed deletions are in [brackets].

* * * * *

Amex Equity Fee Schedule

I. Transaction Charges

No change.

II. Equities Order Cancellation Fee

The executing clearing member is charged $0.25 for every equities and ETF order sent for a mnemonic and cancelled through Amex systems in a given month when the total number of equities and ETF orders executed for that mnemonic is less than or equal to 10% of equities and ETF orders cancelled through Amex systems for that mnemonic in that same month. The fee does not apply to mnemonics for which fewer than 100,000 orders were cancelled through Amex systems and does not apply to the first 100,000 cancellations submitted for a mnemonic. In addition, cancellations resulting from ''Immediate or Cancel'' or ''Fill or Kill'' orders will not be counted towards the number of cancellations used to determine whether the fee should be applied to a mnemonic and will not be counted when determining the amount of the cancellation fee charged to an executing clearing member. Executions of ''Immediate or Cancel'' and ''Fill or Kill'' orders will however be counted towards the number of executions.

[II.] *III.* Regulatory Fee

No change.

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Amex Exchange Traded Funds and Trust Issued Receipts Fee Schedule

Exchange Traded Funds (ETFs) include Portfolio Depositary Receipts, Index Fund Shares and Trust Issued Receipts. The fee imposed for executing trades in these securities will vary depending on for whom the trade is executed as follows:

I. Transaction Charges for ETFs Without Unreimbursed Fees to a Third Party

No change.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the Exchange: (1) Clarified that cancellations resulting from ''Immediate or Cancel'' and ''Fill or Kill'' orders will not be counted when determining the amount of the cancellation fee to be charged to an executing clearing member and updated the corresponding proposed rule text; and (2) stated that Amex plans to begin billing the cancellation fee in November 2005 based on order cancellations and executions occurring in October 2005.

[4] In Amendment No. 2, the Exchange made technical corrections to the proposed rule text. The effective date of the original proposed rule change is September 20, 2005, the effective date of Amendment No. 1 is September 23, 2005, and the effective date of Amendment No. 2 is September 26, 2005. For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the Commission considers the period to commence on September 23, 2005, the date on which Amex filed Amendment No. 1. See 15 U.S.C. 78s(b)(3)(C).

[5] 15 U.S.C. 78s(b)(3)(A)(ii).

[6] 17 CFR 240.19b–4(f)(2).

II. Transaction Charges for ETFs for which the Exchange Pays Unreimbursed Fees to a Third Party

No change.

III. Transaction Charges for SPDR O-Strip

No change.

IV. Transaction Charges for iShares FTSE/Xinhua China 25 Index Fund

No change.

Notes:

No change.

V. ETF Order Cancellation Fee

The executing clearing member is charged $0.25 for every equities and ETF order sent for a mnemonic and cancelled through Amex systems in a given month when the total number of equities and ETF orders executed for that mnemonic is less than or equal to 10% of equities and ETF orders cancelled through Amex systems for that mnemonic in that same month. The fee does not apply to mnemonics for which fewer than 100,000 orders were cancelled through Amex systems and does not apply to the first 100,000 cancellations submitted for a mnemonic. In addition, cancellations resulting from ''Immediate or Cancel'' or ''Fill or Kill'' orders will not be counted towards the number of cancellations used to determine whether the fee should be applied to a mnemonic and will not be counted when determining the amount of the cancellation fee charged to an executing clearing member. Executions of ''Immediate or Cancel'' and ''Fill or Kill'' orders will however be counted towards the number of executions.

[II.] *VI.* Regulatory Fee

No charge.

Note:

1. This exemption does not apply to System Orders of a member or member organization trading as agent for the account of a non-member competing market maker, who will be charged $.000075 × Total Value

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II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Amex included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Amex has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to establish a fee on the cancellation of orders in equities and ETFs. The Amex believes that this fee is necessary given the often disproportionate number of order cancellations received relative to order executions and the increased costs associated with the practice of immediately following an order routed through exchange systems with a cancel request for that order. These order cancellations utilize system capacity and may require manual processing by specialist unit personnel, which may unnecessarily distract specialist staff from other responsibilities. Cancellations often come in large numbers creating backlogs in Amex systems, increasing Exchange costs, adversely impacting public customers, their clearing firms and specialists and resulting in less than timely executions of customer orders. The large volume of order cancellations requires an increase in Exchange spending on systems and related hardware used to process increased message traffic.

The cancellation fee for equities and ETFs is similar in structure to the options order cancellation fee adopted by the Exchange in 2001.[7] The fee will apply to the executing clearing member when the number of cancellations of equity and ETF orders exceeds certain parameters. The cancellation fee for equities and ETFs will be calculated and applied on a ''mnemonic-by-mnemonic'' basis for each clearing member. Mnemonics are reference numbers or codes used by executing clearing members to designate: (1) Either the branch, trading desk or account from which orders, cancellations or other messages are sent to Amex; or (2) the types of products for which orders, cancellations or other types of messages are sent to Amex. For example, some clearing firms use one mnemonic to send equity orders and cancellations and another mnemonic to send ETF orders and cancellations. Each executing clearing member has at least one mnemonic, while many executing clearing members have two or more. Calculating and applying the cancellation fee for equities and ETFs on a mnemonic-by-mnemonic basis provides a more precise way of billing executing clearing members.

Specifically, an executing clearing member will be charged $0.25 for every equities and ETF order sent for a mnemonic and cancelled through Amex systems in a given month when the total number of equities and ETF orders executed for that mnemonic is less than or equal to 10% of the equities and ETF orders cancelled through Amex systems for that mnemonic in that same month. The fee does not apply to mnemonics for which fewer than 100,000 orders were cancelled through Amex systems and does not apply to the first 100,000 cancellations submitted for a mnemonic. For example, in August 2005, an executing clearing member submitted, for one mnemonic, 313,511 orders in Amex equities. For that same mnemonic, the executing clearing member cancelled 286,556 of those orders and executed 26,955. Pursuant to the proposed cancellation fee, the executing clearing member would have been subject to a fee of $46,639 (286,556×100,000 × $0.25) for that mnemonic. Cancellations resulting from ''Immediate or Cancel'' or ''Fill or Kill'' orders[8] will not be counted towards the number of cancellations, since those order types, which combine an order with its cancellation in one message, do not add to the message traffic sent through Exchange systems. Cancellations resulting from ''Immediate or Cancel'' and ''Fill or Kill'' orders will not be counted when determining the amount of the cancellation fee charged to an executing clearing member. Executions of ''Immediate or Cancel'' and ''Fill or Kill'' orders will, however, be counted towards the number of executions.[9]

Amex plans to begin billing the cancellation fee in November 2005 based on order cancellations and executions occurring in October 2005.[10]

2. Statutory Basis

Amex believes that the proposed rule change, as amended, is consistent with Section 6(b) of the Act,[11] in general, and furthers the objectives of Section 6(b)(4)

[7] See Securities Exchange Act Release No. 45110 (November 27, 2001), 66 FR 63080 (December 4, 2001).

[8] A ''Fill or Kill'' order is a market or limited price order which is to be executed in its entirety as soon as it is represented in the trading crowd, and such order, if not so executed, is to be treated as cancelled. An ''Immediate or Cancel'' order is a market or limited price order which is to be executed in whole or in part as soon as such order is represented in the trading crowd, and the portion not so executed, is to be treated as cancelled. See Amex Rules 131(i) and (k).

[9] See Amendment No. 1, *supra* note 3.

[10] *Id.*

[11] 15 U.S.C. 78f(b).

of the Act,[12] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities. In particular, Amex believes that the proposed cancellation fee will allow the Exchange to more equitably recover systems capacity costs from its members.

B. Self-Regulatory Organization's Statement on Burden on Competition

Amex does not believe that the proposed rule change, as amended, will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[13] and subparagraph (f)(2) of Rule 19b-4 thereunder[14] since it establishes or changes a due, fee or other charge imposed by the Exchange.

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.[15]

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-Amex-2005–085 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-Amex-2005–085. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Amex. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Amex–2005–085 and should be submitted on or before October 27, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–5469 Filed 10–5–05; 8:45 am]

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[12] 15 U.S.C. 78f(b)(4).

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b-4(f)(2).

[15] *See supra* note 4.

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52532; File No. SR–CBOE–2005–75]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto Relating to Remote Market-Maker Transaction Fees

September 29, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 9, 2005, the Chicago Board Options Exchange, Inc. (''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 Exchange. On September 26, 2005, the CBOE submitted Amendment No. 1 to the proposed rule change.[3] The CBOE has filed the proposed rule change as one establishing or changing a due, fee, or other charge imposed by the CBOE under Section 19(b)(3)(A)(ii) of the Act[4] and Rule 19b–4(f)(2) thereunder,[5] which renders the proposal, as amended, effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to amend its Fees Schedule to establish a Remote Market-Maker transaction fee for index options, options on exchange-traded funds (''ETFs'') and options on Holding Company Depositary Receipts (''HOLDRs''). Below is the text of the proposed rule change. Proposed new language is *italicized;* proposed deletions are in [brackets].

* * * * *

Chicago Board Options Exchange, Inc.; Fees Schedule

September [1]*9*, 2005

1. Options Transaction Fees (1)(3)(4)(7)(16): Per Contract

Equity Options (13): I.–IX. Unchanged.

QQQQ and SPDR Options: I.–VII. Unchanged.

Index Options (includes Dow Jones DIAMONDS, OEF and other ETF and HOLDRs options):

I.–VIII. Unchanged.

IX. Remote Market-Maker—$.26

2. Marketing Fee (6)(16): Unchanged.

3. Floor Brokerage Fee (1)(5)(16): Unchanged.

4. RAES Access Fee (Retail Automatic Execution System) (1)(4)(16): Unchanged.

Footnotes: (1)–(16) Unchanged.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, CBOE revised the purpose section of the proposed rule change to clarify the rationale for the distinction between the transaction fee for on-floor market-makers and remote market-makers.

[4] 15 U.S.C. 78s(b)(3)(A)(ii).

[5] 17 CFR 240.19b–4(f)(2)

Remainder of Fee Schedule—Unchanged.

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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 CBOE 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 CBOE 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

In April 2005, the Exchange established a transaction fee for Remote-Market-Makers (''RMMs'') in equity, QQQQ and SPDR options at $.26 per contract.[6] An RMM is an individual member or member organization registered with the Exchange that makes transactions as a dealer-specialist from a location other than the physical trading station for the subject option class.

The Exchange proposes to amend its Fees Schedule to establish a $.26 per contract RMM transaction fee for index options, options on ETFs (all other options on ETFs traded on the Exchange besides QQQQ and SPDR options) and options on HOLDRs. The proposed fee will apply to RMM transactions in any index, ETF and HOLDRs options class that the Exchange determines to add to its Hybrid 2.0 trading platform. The Exchange believes the proposed RMM transaction fee is appropriately set higher than those of on-floor market-makers because the Exchange will incur additional systems and other logistical costs both initially and on an ongoing basis in order to establish and maintain the infrastructure needed to enable market participation as an RMM.

2. Statutory Basis

The CBOE believes that the proposed rule change, as amended, is consistent with Section 6(b) of the Securities Exchange Act of 1934 (''Act''),[7] in general, and furthers the objectives of Section 6(b)(4)[8] of the Act in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CBOE 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

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change, as amended, establishes or changes a due, fee, or other charged imposed by the Exchange, it has become effective pursuant to Section 19(b)(3) of the Act[9] and Rule 19b–4(f)(2)[10] thereunder. At any time within 60 days of the filing of the proposed rule change the Commission may summarily abrogate such proposed 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 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 SR–CBOE–2005–75 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 SR–CBOE–2005–75. 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, 100 F Street, NE., Washington, DC 20549. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to SR–CBOE–2005–75 and should be submitted on or before October 27, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Jonathan G. Katz,

Secretary.

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[6] *See* Securities Exchange Act Release No. 51746 (May 26, 2005), 70 FR 32855 (June 6, 2005).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(4).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 19b–4(f)(2).

[11] The effective date of the original proposed rule change is September 9, 2005, and the effective date of Amendment No. 1 is September 26, 2005. For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposal, the Commission considers the period to commence on September 26, 2005, the date on which the Exchange submitted Amendment No. 1.

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52534; File No. SR–CHX–2004–25]

Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Order Approving Proposed Rule Change and Amendment Nos. 1, 2, and 3 Thereto and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 4 Thereto Relating to a Prohibition on Using a Layoff Service Unless the Service Provides Required Information to the Exchange

September 29, 2005.

I. Introduction

On August 31, 2004, the Chicago Stock Exchange, Inc. (''CHX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend CHX Article V, Rule 4 to prohibit CHX participants from using any communications means to send orders to another market for execution (a ''layoff service''), unless the layoff service has established a process for providing the Exchange with specific information about the orders and the executions that participants receive. On June 7, 2005 and June 27, 2005, the Exchange filed Amendment Nos. 1 [3] and 2 [4] to the proposed rule change, respectively. The proposed rule change, as amended by Amendment Nos. 1 and 2, was published for comment in the **Federal Register** on July 12, 2005.[5] The Commission received no comments on the proposal, as amended by Amendment Nos. 1 and 2. On August 12, 2005, the CHX filed Amendment No. 3 to the proposed rule change.[6] Amendment No. 3 was published for notice and comment in the **Federal Register** on August 18, 2005.[7] The Commission received no comments on Amendment No. 3. On September 23, 2005, the CHX filed Amendment No. 4 to the proposed rule change.[8] This order approves the proposed rule change, as amended by Amendment Nos. 1, 2, and 3; grants accelerated approval to Amendment No. 4 of the proposed rule change; and solicits comments from interested persons on Amendment No. 4.

II. Description of the Proposal

The Exchange's proposal, which would amend the Exchange's rule relating to communications from the trading floor, is designed to provide the Exchange with the layoff service information that it needs to enhance its surveillance programs. Specifically, the proposal would prohibit Exchange participants, beginning on September 30, 2005 for Dual Trading System issues [9] and October 31, 2005 for NASDAQ/NM securities,[10] from using a layoff service to send orders to another market for execution, unless that service (or the participant using the service) has established a process for providing the Exchange with the following specific information: (1) The symbol of the security to be traded; (2) the clearing organization; (3) an order identifier that uniquely identifies the order; (4) the participant recording the order details; (5) the number of shares; (6) the side of the market on which the order is placed; (7) a designation of the order type (*e.g.*, market, limit, stop, stop limit); (8) whether the order is for the account of a customer or for the account of the participant sending the order; (9) whether the order is short or short exempt; (10) any limit price and/or stop price; (11) the date and time of order transmission; (12) the market to which the order was transmitted; (13) the time in force; (14) a designation of the order as held or not held; (15) any special conditions or instructions associated with the order (including any customer do-not-display instructions or all-or-none conditions); (16) any modifications to the details set out in (1) through (15) for all or part of an order or any cancellation of all or part of the order; (17) the date and time of the transmission of any modifications to the order or any cancellation of the order; (18) the date and time of any order expiration; (19) the identification of the party canceling or modifying the order; (20) the transaction price; (21) the number of shares executed; (22) the date and time of execution; (23) settlement instructions; (24) a system-generated time(s) of recording the required information; and (25) any other information that the Exchange may require from time to time.[11] For purposes of this proposal, an ''order'' would be defined as any written, oral or electronic instruction to effect a transaction.[12]

Other provisions of the proposal set out additional requirements that are designed to ensure that the Exchange receives uniformly-presented, useful data. For example, the Exchange proposes that all information be provided on a real-time basis and in an electronic format acceptable to the Exchange.[13] In addition, each layoff service would be required to synchronize its business clocks and maintain that synchronization, with all time references expressed in terms of hours, minutes, and seconds.[14]

In addition, the proposal provides that a violation of the proposed new requirements would be considered conduct inconsistent with just and equitable principles of trade, in violation of CHX Article VIII, Rule 7.[15] Therefore, these violations would not be eligible for handling under the Exchange's Minor Rule Violation Plan. The Exchange would also prohibit a participant from using an alternative or additional layoff vendor, unless it has

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Amendment No. 1 dated June 7, 2005. In Amendment No. 1, the Exchange, among other things, added a requirement for participants to provide additional information about their layoff activity; replaced references to the Exchange's ''members'' with references to its ''participants'' to reflect changes in terminology associated with the Exchange's February 2005 demutualization; required that participants notify the Exchange before using an alternative or additional layoff vendor; and confirmed that these rules would not replace any record retention obligations to which the Exchange's participants would be subject under the Act and the rules thereunder.

[4] *See* Amendment No. 2 dated June 27, 2005, replacing the original filing and Amendment No. 1 in their entirety. In Amendment No. 2, the Exchange eliminated the requirement to provide information about the contra party to the execution and made other technical changes to the proposal.

[5] *See* Securities Exchange Act Release No. 51967 (July 1, 2005), 70 FR 40086.

[6] *See* Amendment No. 3 dated August 12, 2005. In Amendment No. 3, which supplemented the proposal as noticed, the CHX modified the proposed rule text to eliminate the reference to an August 1, 2005 effective date and instead provided for an effective date of September 30, 2005.

[7] *See* Securities Exchange Act Release No. 52248 (August 12, 2005), 70 FR 48610.

[8] *See* Amendment No. 4 dated September 23, 2005. In Amendment No. 4, the Exchange amended the proposed rule to include a new effective date of October 31, 2005 for NASDAQ/NM securities in order to allow its participants and their layoff vendors additional time to implement system changes to comply with the proposed rule change. The effective date for Dual Trading System issues would remain at September 30, 2005. The Commission notes that under the Exchange's rules, Dual Trading System securities are securities listed on the New York Stock Exchange, Inc., the American Stock Exchange, Inc., or on markets other than the Nasdaq Stock Market, Inc. that are also listed or traded on the CHX.

[9] *See* Amendment No. 3, *supra* note 6.

[10] *See* Amendment No. 4, *supra* note 8.

[11] *See* proposed CHX Article V, Rule 4, Interpretation and Policy .01.

[12] *See* proposed CHX Article V, Rule 4, Interpretation and Policy .03.

[13] *See* proposed CHX Article V, Rule 4, Interpretation and Policy .01.

[14] *See* proposed CHX Article V, Rule 4, Interpretation and Policy .02 and .03.

[15] *See* proposed CHX Article V, Rule 4, Interpretation and Policy .04.

notified the Exchange of the change.[16] The Exchange confirms in its rule that the provisions in proposed CHX Article V, Rule 4 would not replace any record retention obligations to which the Exchange's participants could be subject under the Act and rules thereunder.[17] Finally, as an administrative matter, the Exchange also proposes to delete CHX Article V, Rule 5, which applied to wires from the Exchange's floor to its branch offices, since the Exchange represents that it no longer maintains branch offices and has no purpose for keeping this rule in place.

III. Discussion and Commission Findings

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[18] In particular, the Commission believes that the proposal is consistent with Section 6(b)(5) of the Act,[19] which requires that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Exchange typically obtains information about off-floor activity of its participants from the Regional Exchange Data Summary (''REDS'') data provided by the Securities Industry Automation Corporation. However, according to the Exchange, the REDS data did not attribute layoff activity to the particular CHX member who transmitted a layoff order. Instead, Exchange market regulation analysts had to manually review the Exchange's exception reports and other trading records in order to conduct surveillance specific to individual CHX participants.[20] CHX has stated that the recording of layoff order information directly from the systems providers will eliminate this manual step, and that the proposal will provide it with necessary layoff service information to enhance its surveillance system.

The Exchange's proposed rule change is intended to address recommendations made in the Exchange's 2003 settlement agreement with the Commission.[21] In the settlement agreement, the Commission cited the Exchange's failure ''to detect and prevent a large number of trading rule violations, in part, because [the Exchange] did not have adequate surveillance systems to detect possible violations.'' [22] In addition, the Commission found that the CHX had ''relied on ineffective and often flawed manual processes to detect violations.'' [23] The Commission believes that the Exchange's proposed obligations on its participants to use only layoff services that can provide specific, designated order information to the CHX is consistent with the recommendations made in the Exchange's settlement agreement with the Commission.

Specifically, the Commission believes that the proposed rule change, as amended, will provide the Exchange with a more automated process for receiving a comprehensive set of audit trail data on CHX participants' trading activity conducted through layoff systems.[24] The proposal will permit the Exchange to more efficiently collect information on the off-floor activity of CHX participants, thereby allowing the Exchange to integrate the audit trail data into its surveillance systems. Increased automation with respect to the receipt of layoff order details will, in turn, allow the Exchange to perform more automated surveillance and generate better surveillance reports.

In addition, the Commission believes that the proposal will improve the Exchange's ability to review its members' order-handling activities and to determine their compliance with applicable trading rules. For example, the Exchange's receipt of layoff vendor data will enhance the Exchange's review of specialists' compliance with the limit order display rule,[25] short sale position marking and tick text requirements,[26] best execution,[27] and trading ahead prohibitions.[28]

Based on the above, the Commission finds the Exchange's efforts, through the proposed rule change, to enhance its surveillance of these areas with respect to layoff orders to be consistent with recommendations made in the Exchange's settlement agreement with the Commission.[29] Further, the Commission finds that the Exchange's proposal to enhance surveillance for compliance with CHX's rules, the Act and the rules thereunder is consistent with the requirements of Section 6(b)(5) of the Act,[30] which requires that the rules of an exchange be designed to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.[31] The Commission emphasizes that the detailed information required to be obtained relating to the layoff service will not replace any record retention obligations already required of CHX participants under the Act and the rules thereunder.

In summary, the Commission believes that approving the proposal will help to strengthen the Exchange's surveillance program by providing the Exchange with data necessary to appropriately conduct more thorough and efficient surveillance of its participants' trading activities.[32]

Accelerated Approval of Amendment No. 4

The Commission finds good cause for approving Amendment No. 4 to the proposed rule change 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.[33] Amendment No. 4 revises the proposed implementation date of the proposed rule change to October 31, 2005 for NASDAQ/NM securities, and maintains the implementation date for Dual Trading System issues at September 30, 2005. The Commission

[16] *See* proposed CHX Article V, Rule 4, Interpretation and Policy .05.

[17] *See* proposed CHX Article V, Rule 4, Interpretation and Policy .06.

[18] In approving this proposed rule change, as amended, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[19] 15 U.S.C. 78f(b)(5).

[20] *See* Letter from David C. Whitcomb, Jr., Senior Vice President and Chief Regulatory Officer, CHX, to Sharon Lawson, Senior Special Counsel, Division of Market Regulation, Commission, dated March 16, 2005 (discussing, in general, how the Exchange plans to utilize the data to be gathered pursuant to the proposed rule change).

[21] *See* Securities Exchange Act Release No. 48566 (September 30, 2003) (Administrative Proceeding File No. 3–11282), available at: *http://www.sec.gov/litigation/admin/34–48566.htm.*

[22] *Id.*

[23] *Id.*

[24] The Exchange represents that layoff systems are private order routing networks which provide connectivity and order management functionality for orders sent to the primary exchanges in the listed markets. *See supra* note 20.

[25] *See* 17 CFR 240.11Ac1–4 and CHX Article XX, Rule 7.05.

[26] *See* 17 CFR 240.10a–1.

[27] *See* CHX Article XX, Rule 37.

[28] *See* CHX Article XXX, Rules 2 and 3.

[29] *See* supra note 21.

[30] 15 U.S.C. 78f(b)(5).

[31] As an additional matter, the Commission believes that the proposal to delete CHX Article V, Rule 5 that applied to wires from the Exchange's floor to its branch offices is reasonable since the Exchange represents that it no longer maintains branch offices.

[32] In a related proposed rule change, the Exchange proposes to amend its rules to require its on-floor participants to maintain specific details about orders originating on or off the floor of the Exchange for execution on the Exchange, as well as orders issued from the floor of the Exchange to any other market or trading venue. *See* SR–CHX–2004–38, available at: *http://www.chx.com/rules/proposed_rules.htm.*

[33] 15 U.S.C. 78s(b)(2).

believes that the proposed extension of the compliance date for NASDAQ/NM securities to October 31, 2005 is reasonable in order to allow CHX participants and their layoff vendors additional time to implement system changes to comply with the proposal, while, at the same time, allows the Exchange to implement the proposal immediately, as of September 30, 2005, for Dual Trading System issues without further delay. Accordingly, the Commission believes that accelerated approval of Amendment No. 4 is appropriate.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether Amendment No. 4 to the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–CHX–2004–25 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–CHX–2004–25. 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 Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CHX–2004–25 and should be submitted on or before October 27, 2005.

V. Conclusion

For the foregoing reasons, 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.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[34] that the proposed rule change (SR–CHX–2004–25) and Amendment Nos. 1, 2, and 3 thereto are approved, and that Amendment No. 4 thereto is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[35]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–5468 Filed 10–5–05; 8:45 am]

BILLING CODE 8010–01–P

[34] 15 U.S.C. 78s(b)(2).

[35] 17 CFR 200.30–3(a)(12).

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Generalized System of Preferences (GSP): Request For Public Comments

AGENCY: Office of the United States Trade Representative.

ACTION: Request for comments and notice of public hearing.

SUMMARY: Legislation authorizing the Generalized System of Preferences (GSP) program expires on December 31, 2006. As Congress considers re-authorization of the program, the Trade Policy Staff Committee (TPSC) is reviewing whether the Administration's operation of the program should be changed so that benefits are not focused on trade from a few countries and developing countries that traditionally have not been major traders under the program receive benefits. The TPSC will conduct a public hearing and is requesting public comment on this subject.

DATES: The schedule for the public hearing and solicitation of public comments follows:

October 21, 2005: Deadline for requests to appear at the Trade Policy Staff Committee Public Hearing and deadline for written pre-hearing brief or statement. Request to include name, address, telephone, fax, e-mail address, and witness's organization, if any.

November 3, 2005: Public Hearing: Rooms 1 and 2, 1724 F Street, NW., Washington, DC (If necessary, the hearing will continue on the next day.)

November 14, 2005: Deadline for submission of written public comments and post-hearing and rebuttal briefs.

SUPPLEMENTARY INFORMATION: The TPSC is seeking written comments and testimony at a public hearing on the following issues: (1) Whether operation of the GSP program should be modified so that beneficiaries that have not previously been major traders under the program increase their participation, which will assist them in using trade to promote their economic development; and (2) Whether some beneficiaries are sufficiently competitive with respect to trade in eligible products and have expanded exports to the extent that they should no longer be designated as GSP beneficiaries.

The TPSC is also seeking comments on the period for which the Congress should reauthorize the GSP program. Note: the TPSC is not seeking information of the type provided in connection with its annual review of product coverage and competitive need limits under the GSP program.

In 2004, the top ten GSP beneficiary developing countries by trade volume (not including trade in petroleum products) were India, Brazil, Thailand, Indonesia, Turkey, Philippines, South Africa, Venezuela, Argentina, and Russia.

Notice of Public Hearing

The TPSC will hold a hearing on November 3, 2005, beginning at 10 a.m., in Rooms 1 and 2, 1724 F Street NW., Washington, DC. If necessary, the hearing will continue on the next day. The hearing will be open to the public and a transcript of the hearing will be made available for public inspection or can be purchased from the reporting company. No electronic media coverage will be allowed.

Each interested party wishing to make an oral presentation at the hearing must submit, following the ''Requirements for Submissions'' below, the name, address, telephone number, facsimile number, and e-mail address, if available, of the witness(es) representing the party to Marideth Sandler, Executive Director of the GSP Program and Chairman of the TPSC GSP Subcommittee, by 5 p.m., October 21, 2005. Requests to present oral testimony in connection with the public hearing must be accompanied by a written brief or statement, in English,

and also must be received by 5 p.m., October 21, 2005. Oral testimony before the GSP Subcommittee of the TPSC will be limited to five-minute presentations that summarize or supplement information contained in briefs or statements submitted for the record. Post-hearing briefs or statements will be accepted if they conform with the regulations cited below and are submitted, in English, by 5 p.m., November 14, 2005. Parties not wishing to appear at the public hearing may submit post-hearing written briefs or statements, in English, by 5 p.m., November 14, 2005.

Requirements for Submission

In order to facilitate prompt processing of submissions, USTR strongly urges and prefers electronic e-mail submissions only in response to this notice. Hand-delivered submissions will not be accepted. These submissions should be single-copy transmissions in English with the total submission not to exceed 20 single-spaced standard letter-size pages. E-mail submissions should use the following subject line: ''2005 GSP Review'' and, as appropriate ''Notice of Intent to Testify'' or Written Comments.'' Documents must be submitted in English in one of the following formats: MSWord (.DOC), WordPerfect (.WPD), or text (.TXT) files. Documents may not be submitted as electronic image files or contain imbedded images (for example, ''.JPG,'' ''.TIF,'' ''.PDF,'' ''.BMP,'' or ''.GIF''). Supporting documentation submitted as spreadsheets are acceptable as Excel files, formatted for printing on 8½ x 11 inch paper. To the extent possible, any data attachments to the submission should be included in the same file as the submission itself, and not as separate files.

If the submission contains business confidential information, a non-confidential version of the submission must also be submitted that indicates where confidential information was redacted by inserting asterisks where material was deleted. In addition, the confidential submission must be clearly marked ''BUSINESS CONFIDENTIAL'' at the top and bottom of each page of the document. The non-confidential version must also be clearly marked at the top and bottom of each page (either ''PUBLIC VERSION'' or ''NON-CONFIDENTIAL''). Documents that are submitted without any marking will be considered public documents. For any document containing business confidential information submitted as an electronic attached file to an e-mail transmission, the file name of the business confidential version should begin with the characters ''BC–'', and the file name of the public version should begin with the characters ''P–''. The ''P–'' or ''BC–'' should be followed by the name of the party (government, company, union, association, etc.) making the submission.

E-mail submissions should not include separate cover letters or messages in the message area of the e-mail; information that might appear in any cover letter should be included directly in the attached file containing the submission itself, including the sender's e-mail address and other identifying information.

The e-mail address for these submissions is *FR0052@USTR.EOP.GOV*. Documents not submitted in accordance with these instructions might not be considered in this review. If unable to provide submissions by e-mail, please contact the GSP Subcommittee to arrange for an alternative method of transmission.

Public versions of all documents relating to this review will be available for review approximately two weeks after the relevant due date by appointment in the USTR public reading room, 1724 F Street NW., Washington, DC. Appointments may be made from 9:30 a.m. to noon and 1 p.m. to 4 p.m., Monday through Friday, by calling (202) 395–6186.

FOR FURTHER INFORMATION CONTACT: For procedural questions concerning written comments or participation in the public hearing, contact Regina Teeter, (202) 395–9681. All other questions should be directed to Marideth Sandler, Executive Director of the GSP Program, Office of the United States Trade Representative, 1724 F Street, NW., Room F–220, Washington, DC 20508, (202) 395–6971.

Carmen Suro-Bredie,

Chairman, Trade Policy Staff Committee.

[FR Doc. 05–20089 Filed 10–5–05; 8:45 am]

BILLING CODE 3190–W5–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Safety Advisory 2005–04

AGENCY: Federal Railroad Administration (FRA), DOT.

ACTION: Notice of Safety Advisory 2005–04.

SUMMARY: FRA is issuing Safety Advisory 2005–04 advising shippers, consignees, and railroads of the dangers of allowing cars of ''time-sensitive'' chemicals to remain undelivered beyond their anticipated date of placement and to recommend enhanced procedures to avoid such occurrences. This action is being taken to improve the safety and reliability of hazardous materials shipments by railroad.

FOR FURTHER INFORMATION CONTACT: Thomas A. Phemister, Railroad Safety Specialist (Hazardous Materials), Hazardous Materials Division, Office of Safety Assurance and Compliance, Federal Railroad Administration, U.S. Department of Transportation, 1120 Vermont Avenue, NW., Washington, DC 20590–0001 (telephone: (202) 493–6050; e-mail: *tom.phemister@fra.dot.gov*).

SUPPLEMENTARY INFORMATION:

Background

At 6:40 p.m. EDT on August 28, 2005, in Cincinnati, OH, fire department personnel responded to a report of smoke coming from a tank car in a railroad yard (Linwood Yard [1]) operated by the Indiana and Ohio Railway Company (IORY). As shipped, tank car PLCX 224841 contained 23,543.97 gallons of styrene monomer, stabilized (170,966.7 pounds at the loading temperature of 60° F.). Styrene monomer, stabilized, is a class 3 (flammable liquid) material. As a result of the release residents were evacuated within a 1 mile radius, later reduced to a ½ mile radius and, by the end of the fourth day, the exclusion zone was reduced further to the immediate area around the car. The Environmental Protection Agency's Pollution Report indicates that, initially, 800 people were evacuated. In addition, four schools closed, and the Ohio River was closed to traffic for a short time. The incident lasted approximately 5 days.

FRA's preliminary investigation indicates that the cause of the incident was a polymerization of the styrene monomer in the tank car due to the deterioration of the inhibiting agent (para-tertiary butylcatechol) as a result of the extended time in transportation. The shipment consisted of 99.91% Styrene Monomer and .09% of other components (the largest identifiable component was the inhibiting agent) and was offered into transportation on December 30, 2004 by Westlake Styrene, Sulphur, LA, and consigned to Queen City Terminals, Cincinnati, OH, under bill of lading number 80435877. Movement records show that the car made a normal trip to the IORY, arriving at interchange between the Norfolk Southern Railway Company and the IORY (at Sharonville, OH) on January 21, 2005. IORY records show the car was moved from the interchange yard to

[1] Linwood Yard on the Indiana & Ohio Railway is also known as Undercliff Yard.

McCullough Yard where it stayed for approximately 5 or 6 weeks before it was moved to Linwood Yard on March 12, 2005. From the time the car was interchanged to IORY until smoke was observed on August 28, 2005, FRA has found no records indicating that the IORY attempted to contact Queen City Terminals to arrange for delivery of the car.

Time-Sensitive Commodities

Each year, America's railroads safely transport more than 1.7 million hazardous materials shipments to their destinations. Certain hazardous materials pose particular risks if not transported, and delivered, promptly. Among these are cryogenic materials, which must be transported, and maintained, at very low temperatures. Federal hazardous materials regulations (49 CFR 173.319(a)(3)) require that:

> The shipper shall notify the Federal Railroad Administration whenever a tank car containing any flammable cryogenic liquid is not received by the consignee within 30 days from the date of shipment. Notification to the Federal Railroad Administration may be made by e-mail to *Hmassist@fra.dot.gov* or telephone call to (202) 493–6229.[2]

Another group of chemicals are time-sensitive because they are shipped with a stabilizing or inhibiting chemical that retards the chemical's natural tendency to polymerize. Polymerization is a chemical reaction in which a large number of relatively simple molecules combine to form complex chains of macromolecules, often times with the evolution of heat and, in closed containers like tank cars, pressure. Of interest here, this process is how styrene monomer becomes the useful polystyrene that is so easily colored, molded, and fabricated.[3] Of course, polymerization is not intended to occur while the material is being transported, which is why it is shipped with an inhibiting agent.

The members of the Association of American Railroads (AAR) and the American Short Line and Regional Railroad Association have adopted the recommendations contained in AAR's Circular OT–55-H, ''Recommended Railroad Operating Practices for Transportation of Hazardous Materials.''[4] This package of recommended procedures includes suggestions for time-sensitive materials. It places responsibility on the railroads for monitoring these shipments and escalating their response as necessary when any car with a time-sensitive product is delayed in transit. The circular includes a list of 20-day time-sensitive products and a list of 30-day time-sensitive products. Products with a 20-day time-in-transit limit include Ethylene, refrigerated liquid; Hydrogen, refrigerated liquid; Chloroprene, stabilized; Methyl Methacrylate Monomer, uninhibited; and Hydrogen Chloride, refrigerated liquid. Products with a 30-day time-in-transit limit include Styrene monomer, stabilized and Recycled Styrene.

Recommendations

1. FRA strongly encourages all railroads to develop procedures that conform to AAR Circular OT–55-H and to assure that railroad employees responsible for the movement of time-sensitive chemicals are familiar with and clearly understand these procedures. Such actions will help ensure that these materials reach their destinations in a timely way. We note that, in accordance with the Hazardous Materials Regulations (HMR; 49 CFR parts 171–180), rail carriers must make every effort to expedite hazardous materials shipments.[5]

2. FRA recommends that shippers and consignees monitor the progress of time-sensitive materials that they have shipped and ordered. While the railroads have the primary responsibility to monitor the movement of freight along their tracks, close attention by shippers and consignees will provide an additional level of safety. A shipper sending a time-sensitive load to a consignee should call the consignee (or use fax or e-mail) and let that party know a car is on the way and should arrive before the expiration of an appropriate number of days. As the due date approaches, either the shipper or the consignee, or both, should contact the railroad(s) involved for a report on how the car is moving. Some shippers and receivers have enough volume of railroad traffic to warrant the installation of automated car monitoring equipment or to hire car monitoring services. FRA is not prescribing how this extra involvement should take place, but the agency will evaluate this activity to determine the need for any future regulatory or other agency action.

3. The HMR require each person who offers a hazardous material for transportation in commerce to class and describe that material correctly.[6] While the AAR's OT–55–H includes a list of time-sensitive materials, and 49 CFR 173.314 and 173.319 regulate specific sub-sets, there are many other products shipped as ''stabilized'' or ''inhibited.'' Each of these has a chemical added, an inert gas blanket applied, or a shipping condition (such as cooling) utilized to promote product stability, purity, and safety. FRA recommends that shippers and consignees work with the railroads to explore ways to reduce the risks in transporting the full range of time-sensitive materials. One good start would be to apply the recommendations in this notice and the concepts in the industry's circular to such materials. FRA will be monitoring hazardous materials movements to ensure that those who offer for transportation and transport such chemicals in commerce work together to minimize the safety risks associated with the movement of time-sensitive materials.

FRA's investigation into the styrene incident in Cincinnati is not yet complete, but the fact that a car of time-sensitive material, carrying an inhibitor, was apparently allowed to languish on the same railroad for seven months is not acceptable. Enhanced efforts by the chemical producers, users, and carriers to monitor their shipments appropriately will further reduce the already low likelihood of a similar occurrence happening again.

Issued in Washington, DC, on September 29, 2005.

Daniel C. Smith,

Associate Administrator for Safety.

[FR Doc. 05–20097 Filed 10–5–05; 8:45 am]

BILLING CODE 4910–06–P

[2] A similar requirement, applicable to compressed gases in tank cars and multi-unit tank cars, appears at 49 CFR 173.314(g)(1).

[3] Adapted from Hawley's Condensed Chemical Dictionary, 14th edition, © 2001, John Wiley & Sons, New York.

[4] The AAR's Circular No. OT–55–H was issued August 25, 2005, and became effective September 1, 2005, replacing Circular No. OT–55–G.

[5] 49 CFR 174.14.

[6] 49 CFR 173.22.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34753]

Central Illinois Railroad Company—Operation Exemption—Rail Line of the City of Peoria, IL

Central Illinois Railroad Company (CIRY), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41, *et seq.*, to operate a line of railroad owned by the City of Peoria, IL (the City), extending easterly approximately 1.9 miles from a point of connection with the Peoria Subdivision of the Union Pacific Railroad Company (UP) at approximately UP milepost 71.5 to a point a short distance west of

University Avenue in Peoria, Peoria County, IL.[1]

Certification is made that CIRY's projected revenues as a result of the transaction will not result in the creation of a Class II or Class I rail carrier. The transaction was scheduled to be consummated no earlier than September 14, 2005 (7 days after the exemption was filed).

If the verified 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. 34753, 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 Thomas F. McFarland, 208 South LaSalle Street, Suite 1890, Chicago, IL 60604–1112.

Board decisions and notices are available on our Web site at *http://WWW.STB.DOT.GOV*.

Decided: September 29, 2005.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 05–20020 Filed 10–5–05; 8:45 am]

BILLING CODE 4915–01–P

[1] The subject line is proposed to be connected to an 8.29-mile rail line known as the Kellar Branch, which is owned by the City. The City was granted an exemption to construct approximately 1,800 feet of connecting track in Peoria in 2004. *See City of Peoria, IL, D/B/A Peoria, Peoria Heights & Western Railroad—Construction of Connecting Track Exemption—In Peoria County, IL*, STB Finance Docket No. 34395 (STB served Sept. 17, 2004). Also, CIRY received authority to operate the Kellar Branch in 2004. *See Central Illinois Railroad Company—Operation Exemption—Rail Line of the City of Peoria and the Village of Peoria Heights in Peoria and Peoria Heights, Peoria County, IL*, STB Finance Docket No. 34518 (STB served July 28, 2004).

Corrections

Federal Register

Vol. 70, No. 193

Thursday, October 6, 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 COMMERCE

International Trade Administration

[A–549–813]

Canned Pineapple Fruit From Thailand: Preliminary Results of Antidumping Duty Administrative Review

Correction

In notice document 05–15640 beginning on page 45651 in the issue of Monday, August 8, 2005, make the following corrections:

1. On page 45652, in the second column, in the 16th line from the top, ''buy'' should read ''by''.

2. On page 45655, in the second column, under the heading **Assessment Rates**, in the seventh line, ''rather'' should read ''rates''.

3. On the same page, in the same column, under the same heading, in the 21st line, **ad valorem** should read *ad valorem.*

[FR Doc. C5–15640 Filed 10–5–05; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Thursday,
October 6, 2005

Part II

Department of Transportation

Federal Aviation Administration

14 CFR Parts 1, 25, 91, etc.

Enhanced Airworthiness Program for Airplane Systems/Fuel Tank Safety (EAPAS/FTS); Proposed Advisory Circulars; Proposed Rule and Notices

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 1, 25, 91, 121, 125, 129

[Docket No. FAA–2004–18379; Notice No. 05–08]

RIN 2120–AI31

Enhanced Airworthiness Program for Airplane Systems/Fuel Tank Safety (EAPAS/FTS)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The intent of this proposal is to help ensure the continued safety of commercial airplanes by improving the design, installation, and maintenance of their electrical wiring systems as well as by aligning those requirements as closely as possible with the requirements for fuel tank system safety. This proposed rulemaking consists of regulatory changes affecting wiring systems and fuel tank systems in transport category airplanes. First, it proposes to organize and clarify design requirements for wire systems by moving existing regulatory references to wiring into a single section of the regulations specifically for wiring and adding new certification rules. It also proposes to require holders of type certificates for certain transport category airplanes to conduct analyses of their airplanes and make necessary changes to existing Instructions for Continued Airworthiness (ICA) to improve maintenance procedures for wire systems. It would require operators to incorporate those ICA for wiring into their maintenance or inspection programs. And finally, this proposed rulemaking would clarify requirements of certain existing rules for operators to incorporate ICA for fuel tank systems into their maintenance or inspection programs.

DATES: Send your comments on or before February 3, 2006.

ADDRESSES: You may send comments [identified by Docket Number FAA–2004–18379] using any of the following methods:

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.
- Fax: 1–202–493–2251.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For more information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

Privacy: We will post all comments we receive, without change, to *http://dms.dot.gov,* including any personal information you provide. For more information, see the Privacy Act discussion in the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: To read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Stephen Slotte, ANM–111, Airplane & Flight Crew Interface, Federal Aviation Administration, 1601 Lind Avenue SW., Renton, WA 98055–4056; telephone (425) 227–2315; facsimile (425) 227–1320, e-mail *steve.slotte@faa.gov* (certification rules) or Fred Sobeck, AFS–304, Aircraft Maintenance Division, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–7355; facsimile (202) 267–7335, e-mail *frederick.sobeck@faa.gov* (operating rules).

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel about this proposed rulemaking. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also review the docket using the Internet at the Web address in the **ADDRESSES** section.

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

Before acting on this proposal, we will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change this proposal in light of the comments we receive.

If you want the FAA to acknowledge receipt of your comments on this proposal, include with your comments a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it to you.

Availability of Rulemaking Documents

You can get an electronic copy using the Internet by:

(1) Searching the Department of Transportation's electronic Docket Management System (DMS) Web page (*http://dms.dot.gov/search*);

(2) Visiting the FAA's Regulations and Policies Web page at *http://www.faa.gov/regulations_policies/;* or

(3) Accessing the Government Printing Office's Web page at *http://www.gpoaccess.gov/fr/index.html.*

You can also get a copy by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the docket number, notice number, or amendment number of this rulemaking.

Organization of This NPRM

Discussion of the proposal in this NPRM is organized under the following headings. Material supplementary to this discussion, but not included in it, appears in appendices at the end of the discussion, before ''List of Subjects.'' Whenever there is a reference to a document being included in the docket

for this NPRM, the docket referred to is Docket Number FAA–2004–18379. A list of acronyms used is included as Appendix A. Unless stated otherwise, rule sections referenced in this NPRM are part of Title 14 of the Code of Federal Regulations.

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I. Executive Summary

Safety concerns about wiring systems in airplanes were brought to the forefront of public and governmental attention by a mid-air explosion in 1996 involving a 747 airplane. Ignition of flammable vapors in the fuel tank was the probable cause of that fatal accident and the most likely source was determined to be a wiring failure causing a spark to enter the fuel tank. All 230 people aboard were killed. Two years later, an MD–11 airplane crashed into the Atlantic Ocean, killing all 229 people aboard. Although an exact cause could not be determined, a region of resolidified copper on a wire of the in-flight-entertainment system cable indicated that wire arcing had occurred in the area where the fire most likely originated.

Investigations of those accidents and subsequent examinations of other airplanes showed that deteriorated wiring, corrosion, improper wire installation and repairs, and contamination of wire bundles with metal shavings, dust, and fluids, which would provide fuel for fire, were common conditions in representative examples of the ''aging fleet of transport airplanes.'' The FAA concluded that current maintenance practices do not adequately address wiring components, wiring inspection criteria are too general, and unacceptable conditions, such as improper repairs and installations, are not described in enough detail in maintenance instructions. Wiring failures result in airplane delays, unscheduled landings, in-flight entertainment system problems, nonfatal accidents, and fatal accidents.

Up until this time, airplane wiring has never been singled out for special attention during maintenance inspections. Although close attention is paid to safe design within systems, we had assumed that for the wiring providing power to those systems, standard industry practice was appropriate, and modifications have often been performed without scrutiny for the effect their wiring additions may have on other systems in the airplane. Damaged wire and insulation can cause electrical arcing, providing the spark that can cause fire. Dust, dirt, lint, contamination, and vapors provide fuel for fire. Recent rules have established requirements for wiring connected to fuel tank systems. This proposal goes further, to address all the wiring contained in an airplane as systems on their own and provide scrutiny to the conditions that affect their safe functioning. It aligns with the requirements for fuel tank wiring.

We are proposing new maintenance, inspection, and design criteria for airplane wiring to address conditions that put transport airplanes at risk of wire failures, smoke, and fire. We are proposing requirements for type certificate holders and applicants for type certificates and supplemental type certificates to analyze all the zones of their airplanes for the presence of wire and for the likelihood of contaminant materials. The proposal would also require them to develop maintenance and inspection tasks to identify, correct, and prevent wiring conditions that cause risk to continued safe flight. We are proposing that these tasks be included in new instructions for continued airworthiness for wiring and that they be compatible with instructions for continued airworthiness for fuel tank systems. We are further proposing to amend Title 14 Code of Federal Regulations (CFR) parts 91, 121, 125 and 129 operating rules to require operators of transport airplanes to incorporate those tasks for wiring and fuel tanks into their regular maintenance programs. Finally, we are creating a new subpart of part 25 to contain all applicable certification requirements for airplane wiring, including new rules to improve safety in manufacture and modification.

The total estimated benefits of the proposal are comprised of efficiency benefits and safety benefits. The efficiency benefits are $192.3 million ($78.3 million present value). The safety benefits are $563 million ($262.4 million present value). From 1995–2002, 397 wiring failures were reported. We used industry estimates to determine that 68% of those failures would be detectable. The 7 most common—burned, loose, damaged, shorted, failed, chafed, and broken wires—account for 84% of all wiring failures. Wiring failures cause 22.1 flight delays per year, with an average time of 3.5 hours and an estimated cost of approximately $35,639 each, and without this proposal, we believe that wiring delays will increase proportionately with the growth of the fleet. Wiring failures cause 27.5 unscheduled landings per year at an average cost of approximately $200,461 per unscheduled landing. We estimate that, based on expected fleet growth of 3.82% per year, there will be 1,118 unscheduled landings caused by wiring failures over a 25-year period, of which approximately 760 would be prevented by this proposal, resulting in a total benefit of averting unscheduled landings of $152.4 million. Delays and unscheduled landings contain safety risks for passengers and crew and increase the likelihood of a more serious event. We estimate 32.8 wiring-related incidents or accidents could be prevented by this proposal in the next 25 years, for a total safety benefit of $563 million ($262.4 million present value). This includes 1.2 fatal accidents that can be prevented.

The estimated total cost of this NPRM is $474.4 million ($209.2 million present value) over 25 years. The total estimated benefits are $755.3 million

($340.7 million present value) over the same period. This proposal is meant to proactively address wiring conditions existing in the transport airplane fleet that we now know affect safe flight and can be detected, corrected, or prevented.

II. Background

A. Flight 800 Accident

Safety concerns about wiring systems in airplanes were brought to the forefront of public and governmental attention by a 1996 accident over the Atlantic Ocean near East Moriches, New York, involving a 747–131 airplane, operated as TWA Flight 800. That accident was investigated extensively by the National Transportation Safety Board (NTSB). It also prompted the FAA to investigate fuel tank wiring, and to focus on aging wiring in general. On May 7, 2001, the FAA published a final rule titled ''Transport Airplane Fuel Tank System Design Review, Flammability Reduction, and Maintenance and Inspection Requirements'' (66 FR 23086) to specifically address safety of the fuel tank, including wiring, which was determined to be the probable cause of the TWA Flight 800 accident. This NPRM addresses safety concerns related to aging wiring in general, and incorporates maintenance requirements specific to fuel tanks.

The NTSB determined the probable cause of the TWA Flight 800 accident, in which the airplane broke up in flight, was an explosion of the center wing fuel tank (CWT) resulting from ignition of the flammable fuel and air mixture in the tank. The source of ignition energy for the explosion could not be determined with certainty. However, of all the sources evaluated, the most likely was a wiring failure outside the CWT. This failure allowed excessive electrical energy to enter the CWT through electrical wiring associated with the fuel quantity indication system (FQIS).

During its investigation, the NTSB found several potentially unsafe conditions in and near the electrical wiring of the accident airplane. The findings included cracked wire insulation, metal shavings adhered to a floor beam where FQIS wires would have been routed (consistent with maintenance records describing compressed air being used to blow metal shavings off avionics units), other debris, and sulfide deposits. In addition, it found evidence of several repairs that did not comply with the guidelines in Boeing's ''Standard Wiring Practices Manual'' (SWPM). Noncompliant repairs included:

- Use of an oversized strain relief clamp on the terminal block of the number 1 fuel tank compensator. The clamp did not adequately secure the wires.
- Many open-ended (rather than sealed) wire splices, which exposed conductors to possible water contamination.
- Several wire bundles containing many wire splices on adjacent wires at the same location.
- Excessive solder on the connector pins inside the fuel totalizer gauge. The solder had apparently caused inadvertent joining of connecting pins/wires from the right main fuel tank and CWT FQIS.

Some of these conditions may suggest the need for improved maintenance. However, the NTSB found that deterioration, damage, and contamination of aircraft wiring and related components, such as those found on the accident airplane, were common in other transport category airplanes inspected as part of the accident investigation. This was especially true in older airplanes. The NTSB concluded that ''the condition of the wiring system in the accident airplane was not atypical for an airplane of its age and one that had been maintained in accordance with prevailing industry practices.''

The NTSB expressed concern about the damage and contamination found on electrical wiring and components during their examinations of numerous transport category airplanes, including the accident airplane. The conditions found were especially disturbing because it was clear from those examinations that much aircraft wiring is difficult, if not impossible, to inspect and test because of its inaccessibility.

The NTSB concluded that inadequate attention to the condition of aircraft electrical wiring had resulted in potential safety hazards. The conclusions from the accident investigation brought a heightened awareness to the FAA, other government agencies, and the general public of the importance of maintaining the integrity of aircraft wiring. A copy of the NTSB findings (NTSB Aircraft Accident Report Number AAR–00/03) can be found on the NTSB Web site *http://www.NTSB.gov,* and is contained in the docket.

B. Flight 111 Accident

Two years after the Flight 800 accident, in September 1998, an MD–11 airplane, operated as Swissair Flight 111, crashed into the Atlantic Ocean off the coast of Nova Scotia, Canada. There were no survivors. Within approximately 53 minutes of the airplane's departure from New York to Geneva, Switzerland, the flightcrew smelled an abnormal odor in the cockpit. The cockpit voice recorder indicates that they thought the smell was coming from the air-conditioning system. A short time after the flightcrew noticed the smell, there was smoke in the cockpit, and they diverted the airplane to the Halifax airport.

While preparing for landing, the flightcrew were unaware that fire was spreading above the ceiling in the front of the aircraft. They declared an emergency and signaled a need to land immediately. About one minute later, radio communications and secondary radar contact with the aircraft were lost, and the flight recorders stopped functioning. About five and one-half minutes later, the aircraft crashed into the ocean.

In its final report, ''Aviation Investigation Report, In-Flight Fire Leading to Collision with Water,'' Report Number A98H0003, the Transportation Safety Board of Canada (TSB) (the Canadian governmental body charged with aircraft accident investigation) could not identify the exact cause of the fire. As part of its 11 findings of causes and contributing factors, however, the TSB stated that: ''A segment of in-flight entertainment network power supply unit cable exhibited a region of resolidified copper on one wire that was caused by an arcing event. This resolidified copper was determined to be located in the area where the fire most likely originated. This arc was likely associated with fire initiation event; however, it could not be determined whether this arced wire was the lead event.'' That report can be found in the docket.

In the section of the report entitled ''Findings as to Risk,'' the TSB cited 24 separate risks that had the potential to degrade aviation safety but could not be shown to have played a direct role in the event, or are unrelated to this event but were found during the investigation. Among those findings of risks are the following statements. (The numbers under which each finding appears in the TSB report are indicated.)

- ''Regulations do not require that aircraft be designed to allow for the immediate de-powering of all but the minimum essential electrical systems as part of an isolation process for the purpose of eliminating potential ignition sources.'' (3.2.3)
- ''Examination of several MD–11 aircraft revealed various wiring discrepancies that had the potential to result in wire arcing. Other agencies have found similar discrepancies in

other aircraft types. Such discrepancies reflect a shortfall within the aviation industry in wire installation, maintenance, and inspection procedures.'' (3.2.7)

• ''The consequence of contamination of an aircraft on its continuing airworthiness is not fully understood by the aviation industry. Various types of contamination may damage wire insulation, alter the flammability properties of materials, or provide fuel to spread a fire. The aviation industry has yet to quantify the impact of contamination on the continuing airworthiness and safe operation of an aircraft.'' (3.2.8)

• ''There is no guidance material to identify how to comply with the requirements of Federal Aviation Regulation (FAR) 25.1353(b) [relating to cable routing] in situations where physical/spatial wire separation is not practicable or workable, such as in confined areas.'' (3.2.10)

• ''Inconsistencies with respect to CB (circuit breaker) reset practices have been recognized and addressed by major aircraft manufacturers and others in the aviation industry. Despite these initiatives, the regulatory environment, including regulations and advisory material, remains unchanged, creating the possibility that such ''best practices'' will erode or not be universally applied across the aviation industry.'' (3.2.12)

• ''FAR 25.1309 requires that a system safety analysis be accomplished on every system installed in an aircraft; however, the requirements of FAR 25.1309 are not sufficiently stringent to ensure that all systems, regardless of their intended use, are integrated into the aircraft in a manner compliant with the aircraft's type certificate.'' (3.2.21)

In addition to the two accidents discussed above, multiple incidents and accidents that have occurred over the years illustrate the types of wire malfunctions that can affect flight safety. A discussion of some of those, titled ''EAPAS NPRM Supplemental Material, Other Incidents and Accidents Involving Electrical Wiring,'' is included in the docket for this NPRM.

C. FAA Aging Transport Nonstructural Systems Plan

After the Flight 800 accident, at the recommendation of the White House Commission on Aviation Safety and Security (WHCSS), the FAA expanded its Aging Aircraft Program, which in the past had focused on structures, to cover nonstructural systems. We formed a team to study aging nonstructural systems and conduct detailed physical evaluations of aging airplanes. We reviewed the report from that study team, along with information from meetings with FAA principal inspectors and representatives of major airplane manufacturers, as well as an analysis of airplane service histories. From this combined information, we developed the Aging Transport Nonstructural Systems Plan (included in the docket for this NPRM). The plan's primary focus is on electrical wiring systems. There are other on-going research and development activities that address mechanical and avionics systems.

The July 1998 Aging Transport Nonstructural Systems Plan includes results of the evaluation of five transport category airplanes considered representative of the ''aging fleet of transport airplanes.'' The FAA found conditions similar to those the NTSB found during its investigation of the TWA Flight 800 accident. Those conditions included:

• Deterioration of wiring and related components.

• Stiff and cracked wire.

• Contamination of wire bundles with metal shavings, dust, and fluids.

• Corrosion on connector pins.

• Improper wire installation and repairs.

The FAA also found, as had NTSB investigators, that wires contained in wire bundles are difficult to inspect.

The conclusions reached from this evaluation were that:

• Current maintenance practices do not adequately address wiring components.

• Wire inspection criteria are too general.

• Unacceptable conditions, such as improper repairs and installations, are not described in enough detail in maintenance instructions.

• Repair instructions and data are difficult to extract from SWPMs.

• The information that maintenance personnel are given for wire replacement may not be adequate.

• Current incident/maintenance reporting procedures do not allow for easy identification of failures.

The NTSB agreed with these conclusions.

The Aging Transport Nonstructural Systems Plan detailed several tasks and associated subtasks aimed at correcting these problems, including:

• Improving wiring inspection criteria and providing more detailed descriptions of undesirable conditions.

• Improving inspector training to ensure that it adequately addresses the recognition and repair of aging wiring components.

• Developing new methods for nondestructive testing of wiring.

The NTSB responded to the issues defined in the Aging Transport Nonstructural Systems Plan. They concluded that they are important safety issues and must be fully addressed through rulemaking or other means. Specifically addressed by the NTSB (NTSB Recommendation No. A–00–108, included in the docket) were the need for:

• Improved training of maintenance personnel to ensure adequate recognition and repair of potentially unsafe wiring conditions;

• Improved documentation and reporting of potentially unsafe electrical wiring conditions; [1] and

• Incorporation of the use of new technology, such as arc-fault circuit breakers and automated wire test equipment.

The NTSB also recommended (NTSB Recommendation A–00–106, included in the docket) that the FAA review the design specifications for aircraft wiring systems of all U.S.-certified aircraft and then:

• Identify which systems are critical to safety; and

• Require revisions, as necessary, to ensure that adequate separation is provided for the wiring related to those critical systems.

Finally, the NTSB recommended that the FAA ensure that all part 25 transport category airplanes, regardless of whether they are operated under parts 91, 121, 125, or 135, be included in the review of aging transport airplane systems and structures (NTSB Recommendation A–00–119, contained in the docket).

The FAA Administrator established a formal advisory committee (the Aging Transport Systems Rulemaking Advisory Committee, or ATSRAC) in 1998. Its purpose was to facilitate actions recommended by the Aging Transport Nonstructural Systems Plan (FAA Order 11110.127, Aging Transport Systems Rulemaking Advisory Committee, dated Jan. 19, 1999, included in the docket). This committee is made up of representatives of aircraft manufacturers, transport airplane operators, aerospace and industry associations, and governmental agencies.

In January 1998, the FAA assigned five tasks to ATSRAC. These included collecting data on aging wiring systems through airplane inspections, reviewing

[1] Recommendations for improved documentation and reporting and for incorporation of new technology are not addressed by this proposed rule. They are, however, part of the FAA's Enhanced Airworthiness Program for Airplane Systems (EAPAS). The EAPAS report, dated October 15, 2002, can be found in the docket for this NPRM. For a discussion of training, see ''ATSRAC Recommendations for Rulemaking'' in the same docket.

airplane manufacturers' service information, reviewing operators' maintenance programs, and providing the FAA with recommendations to improve the safety of those systems. ATSRAC's work on those tasks focused on transport category airplanes.

The ATSRAC review of data (The ''Aging Systems Task Force Aging Transport Systems Task 1 and Task 2 Final Report,'' included in the docket) yielded the following wiring-related findings:

- Nine B–727 airplanes inspected; 276 discrepancies found.
- Nine B–737 airplanes inspected; 399 discrepancies found.
- Seven B–747 airplanes inspected; 238 discrepancies found.
- Fourteen DC–8 airplanes inspected; 974 discrepancies found.
- Fifteen DC–9 airplanes inspected; 116 discrepancies found.
- Fourteen DC–10 airplanes inspected; 714 discrepancies found.
- Three L–1011 airplanes inspected; 247 discrepancies found.
- Ten A–300 airplanes inspected; 408 discrepancies found.

The results from those five initial tasks showed that problems related to wiring systems on aging airplanes were not entirely related to degradation over time. Inadequate installation and maintenance practices were identified as factors that can lead to what is commonly referred to as an ''aging system'' problem. As a result, the scope of ATSRAC's work was expanded to include improving the continued airworthiness of airplane systems, particularly wiring systems.

In May 2001, the FAA assigned four new tasks to the committee to carry out the ATSRAC recommendations on the first five tasks (66 FR 29203). These next tasks were to accomplish the following:

- Address the need for new wire system certification requirements.
- Propose changes to the standard wiring practices manual.
- Develop a training program for wire systems.
- Develop maintenance criteria for wire systems.

The results discussed earlier from ATSRAC's review of the eight models of large transport category airplanes had heightened concern about whether similar conditions existed in small transport category airplanes (airplanes with a 6- to 30-passenger seating capacity). As a result, in March 2002 (67 FR 9799), the FAA assigned another task to ATSRAC—to investigate and develop recommendations to improve the safety of electrical wiring systems in transport category airplanes certificated for fewer than 30 passengers. In response to this task, ATSRAC examined the applicability of their previous recommendations to this group of airplanes and identified issues unique to electrical wiring systems on small transport category airplanes. ATSRAC's work in this area is continuing.

Another investigative group functioning within ATSRAC, whose wiring inspections extended to the laboratory, was the Intrusive Inspection Working Group (IIWG).[2] The IIWG subjected selected wire installations on six decommissioned airplanes to an intensive, detailed visual inspection, followed by destructive testing and laboratory analysis (an intrusive inspection). They studied the results to assess the state of wire on aged airplanes as a function of wire type and service history. In addition, the results from the visual inspections were compared with the nondestructive testing and laboratory analysis to determine the efficacy of visual inspections for the detection of age-related deterioration.

The findings from the IIWG were documented in the ''Transport Aircraft Intrusive Inspection Project (An Analysis of the Wire Installations of Six Decommissioned Aircraft) Final Report,'' issued on December 29, 2000 (from now on referred to as ''Intrusive Inspection Report''). A copy is included in the docket. The findings showed that wire-related failures have multiple causes. These include:

- Localized heat damage.
- Breaches in wire insulation.
- Wire embrittlement.
- Charred wire insulation.
- Missing insulation.
- Chafing.
- Arcing.
- Arc tracking.
- Reduced insulation resistance in certain wires.
- Defective and broken connectors.
- Damage to connector backshells.

Both the nonintrusive, visual inspections on the airplane and the intrusive inspections found most wiring discrepancies were in areas of frequent maintenance activity. In addition, fluid contamination and dust and dirt accumulations were common in those areas.

The Intrusive Inspection Report identified several areas that required special emphasis. Three areas—the cockpit, electrical power centers, and power feeder cables—were considered critical. This is because chafing on wiring in these areas, combined with flammable materials close by, can result in severe outcomes, such as wire-to-structure or wire-to-wire shorting and arcing. Since a fire in these areas could present a high risk to continued safe flight and landing, the IIWG recommended more detailed inspections for those three areas. The intent was to ensure potential problems are identified and corrected. This effort led to the development of an enhanced zonal analysis procedure (EZAP) to assess risk for fire so that maintenance programs developed for wire systems in such critical areas would require more detailed inspections. An EZAP is a specific wire-focused version of the zonal analysis procedure widely used to analyze an airplane's physical areas or zones. It's used for developing maintenance tasks. One version of an EZAP is described in proposed AC 120–XX, ''Program to Enhance Transport Category Airplane Electrical Wiring Interconnection System Maintenance.''

ATSRAC made a number of recommendations to the FAA. Those recommendations and the FAA's responses to them are included in the docket in the document titled ''ATSRAC Recommendations for Rulemaking.'' ATSRAC working groups also produced four proposed advisory circulars (AC) as guidance for their recommended rulemaking. These proposed ACs are on the topics of wiring system maintenance, training, standard wiring practices manuals, and the proposed subpart H, and will be briefly discussed at the end of this preamble under the heading ''Advisory Circulars.''

D. Fuel Tank Safety Rule

In addition to the activities described earlier, in response to the TWA 800 accident, the FAA has developed an extensive program to address safety problems associated specifically with fuel tanks. As mentioned previously, on May 7, 2001, the FAA issued a final rule entitled, ''Transport Airplane Fuel Tank System Design Review, Flammability Reduction, and Maintenance and Inspection Requirements.'' This discussion refers to that final rule as the ''Fuel Tank Safety Rule.'' The Fuel Tank Safety Rule was issued to address unforeseen failure modes and the lack of specific maintenance procedures that could result in degrading the design safety features intended to preclude ignition of fuel tank vapors.

One part of the Fuel Tank Safety Rule, Special Federal Aviation Regulation 88,

[2] The IIWG was a separate but parallel group within the Aging Systems Task Force (ASTF). The Air Transport Association (ATA) formed the ASTF in June 1998 to review the effectiveness of maintenance on electrical wiring systems and assess the condition of those systems on aircraft with type certificates (TC) older than 20 years. When ATSRAC was formed in 1998, it continued the work started under the ASTF.

(SFAR 88) applies to design approval holders of certain turbine-powered transport category airplanes, and any person who modifies those airplanes later. SFAR 88 requires these regulated parties to perform safety assessments to confirm if the design of the fuel tank system precludes the existence of ignition sources in the fuel tank system. SFAR 88 also requires development of design changes and maintenance and inspection instructions to assure the safety of the fuel tank system.

Other sections of the Fuel Tank Safety Rule (referred to as the ''operational rules'') require that operators of those airplanes include fuel tank safety maintenance and inspection instructions in their existing maintenance or inspection programs. The requirements of those sections address two areas:

(i) The fuel tank systems of the ''baseline'' airplane (as originally made by the TC holder); and

(ii) The ''actual configuration'' of the fuel tank systems of each affected airplane (as modified or altered after original manufacture).

As discussed later, one purpose of this rulemaking is to make sure that the implementation of this proposal for wiring is aligned with the implementation of the Fuel Tank Safety Rule.

E. Existing Wiring Certification Regulations

Traditionally, wire has not been looked upon as having the same importance to safety as the rest of the systems for which it provides the electrical interconnection. Whereas a particular piece of electrical equipment may be the focus of intense scrutiny regarding its design, installation, and maintenance, the wires that provide the electrical interconnection to that equipment have not received the same amount of attention, except for the wiring on engines. Additionally, in the past, system safety assessments usually addressed only the effect of a wire failure on the system itself. The safety assessments have not usually identified the effect of wire failures on other systems or on the airplane.

Existing regulations fall short of providing specific wiring-related requirements that we now recognize should be included. For example, current rules do not adequately address requirements for wires in system separation, safety assessments, component selection, component identification, protection in cargo and baggage compartments, and accessibility for inspection, maintenance, and repair.

This quote from FAA Wiring Policy ANM–01–04 supports the need for more specific wiring information: ''The FAA expects the applicant to provide engineering drawings instead of merely statements such as 'install in accordance with industry standard practices,' or 'install in accordance with AC 43.13 [''Acceptable Methods, Techniques, and Practices—Aircraft Inspection and Repair'']. The FAA considers such statements inadequate because the standard practices cannot define the location or routing of the wiring to the level needed to ensure that new/modified wiring does not invalidate previous certification findings for existing airplane systems.''

III. General Discussion of the Proposal

A. Nature of the Problem

Electrical wiring systems perform roles essential to the safety of the entire airplane. They distribute power throughout the airplane, transmit signals for control, and send data. Over time, as more sophisticated computerized systems have been introduced into airplane controls, their electrical wires, cables, and associated components have become increasingly important to safe flight.

Historically, manufacturers have been required to provide maintenance-related information for airplane systems. However, there has never been a requirement for maintenance information specifically addressing wiring systems. Since January 28, 1981, design approval holders have been required to provide ICA for the airplane. ICA must be prepared in accordance with Appendix H to part 25. In developing ICA, the applicant must include certain information. This includes a description of the airplane and its systems, servicing information, and maintenance instructions, including the frequency and extent of inspections necessary to provide for the continued airworthiness of the airplane. Currently, § 25.1529 includes a requirement for an FAA-approved Airworthiness Limitations section in the ICA. This section must list those mandatory inspections, inspection intervals, replacement times, and related procedures approved under §§ 25.571 and 25.981. There are no requirements for specific information related to wiring.

Airplanes must be continually maintained and inspected, and the information contained in the ICA is used as a basis for developing a maintenance program. Yet the examinations of large transport airplanes discussed earlier revealed many anomalies in electrical wiring systems and their components, as well as contamination by dirt and debris.

Section 43.13(b) requires anyone performing maintenance or alteration to do the work in such a manner and use materials of such a quality that the condition of the aircraft, airframe, aircraft engine, propeller, or appliance worked on will be at least equal to its original or properly altered condition (with regard to aerodynamic function, structural strength, resistance to vibration and deterioration, and other qualities affecting airworthiness). Anyone performing maintenance must use methods, techniques, and practices prescribed in the current manufacturer's maintenance manual or ICA prepared by the manufacturer, or methods, techniques, and practices referred to in § 43.13(a) as acceptable to the Administrator. However, current practice has shown that, when wiring is inspected as part of the maintenance program or following alterations, it is not always cleaned appropriately for the inspection being performed. Generally, neither FAA inspectors nor airline maintenance workers have been fully aware of the vulnerable and critical condition of wire and fuel tank systems. Little focus has been placed on the importance of cleaning electrical wiring during maintenance or alteration. The result has been to hasten the aging of wiring.

Extensive research by the FAA, in partnership with the aviation industry and other government agencies, has shown that electrical wiring on transport category airplanes is subject to a breakdown of physical and functional properties. This is not just a function of time, but also because of many stresses on the wiring. These stressors include chafing, vibration, contamination, and temperature variation, all of which can cause cumulative damage. Each airplane maintenance procedure or modification, whether performed on the wiring system itself or on surrounding components, introduces possibilities for unintentional damage, changes to the previously approved wire design, or contamination of the wiring systems by fluids, foreign objects, and debris. As the aviation industry matures, there are more older airplanes in service, and the wiring in those airplanes has had more years of exposure to all these factors. Electrical wiring system malfunctions resulting from inadequate design, alteration, maintenance, inspection, and repair practices can cause incidents and accidents involving smoke, fire, and/or loss of function.

Wire contamination is a major concern, especially in older airplanes,

and it occurs in many ways. Dust, dirt, and lint from airplane carpets and seats, lavatory waste products, hydraulic fluid, engine oil, corrosion prevention compounds, and galley spills all collect over time. Liquids can corrode connectors and other wiring components and degrade wire insulation. In addition, electrical current flow in the wiring attracts dust, dirt, and lint, and they are deposited on the wiring system and surrounding airplane structure by cabin airflow. Leakage of fluid lines and spills make the wiring grimy, so more dust, dirt, and lint are attracted to them.

To fully understand why wiring system contamination is a major problem and a potential fire hazard that could prevent the safe operation of an airplane, it is necessary to understand the ''fire triangle'' of combustion. The fire triangle symbolizes three elements—oxygen, heat or ignition source, and fuel. All three are necessary for fire to occur.

In an airplane, oxygen, the first element of the triangle, is always present, because the heating and air-conditioning system must provide a suitable environment for passengers. Wiring can act as an ignition source (second element), especially if damage, such as cracked insulation or chafing, causes a short to ground or to another conductor, or if it causes arcing. Fuel for fire (third element) can be present in the form of dust, dirt, lint, hydraulic fluid, engine oil, engine fuel, and corrosion prevention compound. Eliminating or mitigating any of these elements will help remove the fire threat.

For obvious reasons, oxygen cannot be eliminated from an airplane. Wiring systems provide critical functions, so they cannot be eliminated either. But their ability to act as a fire ignition source can be mitigated by proper design, maintenance, and repair. The easiest element to alleviate is fuel for fire. The improved maintenance requirements in this proposal, as well as the more rigorous design standards, are intended to address the fuel and ignition elements of the fire triangle of combustion.

This NPRM also addresses the requirement that certain operators incorporate ICA for their fuel tank systems into their maintenance or inspection programs, to ensure the continued safe operation of those design features that minimize the potential for an ignition source in the fuel tank system. Although there are existing regulations that require these ICA, the FAA believes, based on lessons learned from SFAR 88 and industry comments, that the existing operational rules need to address several issues that have arisen since they were adopted. Also, because there are elements in the fuel tank system that include wiring, those ICA could conflict with the requirements for electrical systems in this proposal. Additionally, the FAA believes that the compliance times for the regulations for those two systems, wiring systems and fuel tank systems, should be aligned.

B. Relationship of This Proposal to Other Aging Aircraft Initiatives

The FAA, as part of a broader review and realignment of its Aging Airplane Program, has determined that certain compliance dates in existing rules and pending proposals could be better aligned, so that operators can comply more efficiently with the requirements during scheduled maintenance. Compliance dates could also impact our ability to schedule oversight programs efficiently. In addition, based on our review, we have determined that certain substantive changes are needed to improve the cost-effectiveness of these rules and proposals. Therefore, we have decided to revise these requirements and proposals and align the compliance schedules as practically as possible. Notice of these changes and a description of our Aging Airplane Program review appeared in the **Federal Register** on July 30, 2004 (69 FR 45936). The actions affected by these revisions are this proposal and three others:

- Transport Airplane Fuel Tank System Design Review, Flammability Reduction, and Maintenance and Inspection Requirements Special Federal Aviation Regulation (Fuel Tank Safety Rule) (final rule).
- Aging Airplane Safety (interim final rule).
- Widespread Fatigue Damage (pending proposal).

To prevent any conflicts within this proposal, which affects fuel tank wiring issues, changes to the operational requirements of the Fuel Tank Safety Rule requiring the incorporation of fuel tank system maintenance and inspection tasks are proposed as part of this rulemaking.

C. Alternatives to Rulemaking

Before proposing new rulemaking, the FAA must consider alternative ways to solve the safety issues under consideration. Following is a brief discussion of two of the alternatives we considered during deliberations on this rulemaking proposal.

No new regulatory action. The FAA believes that the result of no action would be continued incidents and accidents resulting from wiring system failures. We would continue to address these situations ''reactively'' on a case-by-case basis (as they occur) by issuing airworthiness directives. This is unacceptable from a safety standpoint. Improved certification regulations, inspection and maintenance programs, and ICA for wiring systems are needed to address the potential for similar problems arising on existing and future designs, and to ensure their long-term safety.

Rely on voluntary compliance with the intent of the rule by affected parties. Some in industry have suggested simply issuing ACs to give guidance on the changes that need to be made. Issuing ACs would depend on voluntary compliance, and would not be enforceable. While certain members of the industry would proceed with voluntary programs, others would not. The use of ACs alone would ensure neither consistent results nor the achievement of the safety objectives of this proposal for the current and future fleet. Previous voluntary safety assessments, such as those relating to the thrust reverser and cargo door reviews, have been difficult to complete in a timely manner because they lacked enforceability. The proposed rules provide an enforceable means to require timely completion of the actions identified as necessary to address aging electrical wiring systems.

IV. Overview of Proposal

The FAA proposes several rule changes that collectively provide a more proactive management of wiring systems. These changes would require development and implementation of ICA for wiring systems and subsequent incorporation of those ICA into the operators' maintenance or inspection program. We are also proposing changes in the certification rules to require, during design and installation of airplane systems, more attention to conditions that could compromise wire safety and accessibility.

The result of these changes to the maintenance and certification programs would be to remove, as far as possible, sources of ignition and fuel for fire from the wiring systems. In addition, a new part 25 subpart dedicated to wiring systems would be created. The current part 25 regulations for wire would be moved into this new subpart and combined with new regulations. An alignment of the compliance times for incorporation of the wire and fuel tank ICA would also occur to enable a more comprehensive treatment of those ICA and accomplishment of the maintenance instructions at time intervals consistent

with typical airplane maintenance checks.

The FAA believes that traditional ways of addressing wiring are no longer enough. Because wire damage or degradation can be the result of successive and interactive factors introduced over time, the approach to ensuring wiring safety must be analytical, multilayered, and proactive, rather than reactive. An analytical approach means assessing logically the possibilities for fire occurring. A multilayered approach means addressing multiple layers of stressors, like chafing, vibration, temperature change, and modification that act on wiring in succession or concurrently and can cause cumulative damage to an electrical system. A proactive approach means addressing conditions affecting safe flight that we know can happen—before they happen. Causes of wire degradation must be addressed separately and collectively, and analyzed in relation to the entire airplane. Based on the findings and research described earlier in this document, the FAA has determined that air carriers, operators, TC holders, supplemental type certificate (STC) holders, repair stations, and certificated maintenance personnel need to place more emphasis on wiring and fuel tank systems when performing maintenance and alterations. Currently, other than the visual inspections required by maintenance or inspection programs, maintenance is not normally performed on these systems unless an obvious discrepancy is identified. This proposal is designed to heighten awareness of the criticality of wiring systems and to change the current approach to maintaining and modifying them. Maintenance personnel need to be aware that current industry practice for maintenance and inspection of these systems is inadequate and must be improved, as provided by this proposal.

The changes proposed in this NPRM were derived from the maintenance, inspection, design, and alteration best practices developed through extensive research by ATSRAC and other groups, including the White House Commission on Aviation Safety and Security,[3] the National Science and Technology Council Committee on Technology Wire System Safety Interagency Working Group,[4] the IIWG, and safety reviews required in accordance with SFAR 88.

The following table summarizes the proposed regulatory changes that are discussed in detail in this section.

SUMMARY OF PROPOSED RULEMAKING IN THIS NPRM

Affected part of 14 CFR	Description of proposal	Applies to
1	Adds the abbreviation ''EWIS''.	
25	Harmonization rules	Applicants for type, amended, and supplemental type certificates
25	New subpart H containing: New and revised wire-related certification requirements including requirements to develop ICA for electrical wiring interconnection systems.	Applicants for type, amended, and supplemental type certificates
25	New subpart I containing: New requirements to develop ICA for electrical wiring interconnection systems in accordance with proposed § 25.1539 and the revised Appendix H for the current specified fleet.	Type certificate holders for large transport category airplanes and certain applicants for type, amended and supplemental type certificates
Parts 121/129	Requirement to incorporate new EWIS ICA into maintenance program (included in new subparts for Continued Airworthiness).	U.S. certificate holders and foreign persons operating U.S. registered large transport category airplanes
Parts 91/121/125/129	New subparts (L, Y, M, and B respectively) for Continued Airworthiness containing parts 121/129 EWIS ICA requirements (above) and: • Requirement to incorporate fuel tank ICA into maintenance program. • Redesignation of other existing requirements into these new subparts	U.S. certificate holders and foreign persons operating U.S. registered large transport category airplanes.

Currently, part 25 does not have a separate subpart governing wiring. Certification rules that apply to wiring appear throughout the regulations, under the headings ''Design and Construction,'' ''Powerplant,'' and ''Equipment.'' In some of these rules, the term ''wiring'' is not specifically used.

The discussion of proposed changes to part 25 is broken into four parts:

- Part 25 Subpart H—Electrical Wiring Interconnection Systems (EWIS).
- Part 25 Subpart I—Continued Airworthiness.
- Other Proposed Changes to Part 25.
- Part 25 Electrical System Harmonization Rules.

ATSRAC recommended placing part 25 wiring-related regulations into one section. This change would increase the visibility of these regulations and facilitate a comprehensive process for the design and certification of wire systems. ATSRAC reviewed the current part 25 to identify each regulation that related to wiring, either directly or indirectly. Each wire-related regulation was then reviewed to determine if it should be moved (in whole or in part) into the proposed new subpart. As a result of ATSRAC's recommendations, this NPRM would change some existing wire requirements, add new ones, and compile all of them into a new subpart: subpart H of part 25.

No single regulation was moved in its entirety to the new subpart, but applicable portions of regulations were moved. Some regulations easily lent themselves to division into wire and non-wire portions, while others did not. In some cases it was difficult to remove the wire-related portion and maintain the continuity of the existing regulation. In those cases, the regulation was not moved to subpart H. Instead, the current regulation remained in place and a new subpart H regulation was created to state the importance of wiring systems to the safe design of the system that is the subject of the existing regulation. Portions of some current regulations that were moved to the new subpart were divided and distributed among

[3] ''Final Report to President Clinton, February 12, 1997,'' a copy of which is in the docket.

[4] ''Review of Federal Programs for Wire System Safety,'' November 2000, in the docket.

several new subpart H sections to follow the logical structure of the new subpart. Accordingly, there is not always a one-to-one correspondence between the existing regulations and the new subpart H regulations. A table showing the correlation between proposed new regulations and the existing regulations can be found in APPENDIX B. The table in APPENDIX C compares the existing regulations to the proposed new ones. The APPENDIX D table shows which of the current wire-related rules must be changed to accommodate the new subpart and which will remain the same.

Adoption of the proposed new and revised requirements and advisory material would help prevent future occurrences of the types of incidents and accidents described in this NPRM. The creation of a new part 25 subpart for all existing, revised, and new wire system certification requirements would strengthen the role of properly designed, installed, and maintained wire systems in increasing the safety of flight. It would also provide the regulatory tools to help ensure this outcome and locate all applicable regulations in a single place that is easy to reference and use.

Certain vintage airplanes type certificated before 1958, the beginning of the jet age, would be excluded from the requirements of this proposal. They are named in paragraph (f) of § 25.1805 and in the final paragraph of each of the proposed fuel tank and EWIS operating rules. There are no known reciprocating-powered transport category airplanes currently in scheduled passenger service, and the few remaining in cargo service would be excluded. Compliance is not required for these specific older airplanes because their advanced age or small numbers would likely make compliance economically impractical.

V. Section-by-Section Discussion of Proposed Rules

The FAA proposes to add the abbreviation for electrical wiring interconnection systems (EWIS) to 14 CFR part 1—Definitions and Abbreviations. The purpose of this addition is to ensure the use of a common term for EWIS throughout the regulations. More detailed analysis of the other proposed changes and additions is outlined below.

A. Part 25 Subpart H—Electrical Wiring Interconnection Systems (EWIS)

The proposed subpart H consists of relocated, revised, and new regulations about EWIS. Unless we say otherwise, our purpose in moving requirements to subpart H is to ensure their application to EWIS. We do not intend to change their legal effect in any other way.

Section 25.1701 Definition

Proposed § 25.1701 would define what constitutes an EWIS for the purposes of complying with the proposed subpart H requirements and other EWIS-related requirements of parts 25, 121, and 129.

Current regulations do not provide a definition of a wiring system. Without this definition, the proposed rules could be inconsistently applied to various wire-related components. To completely address the safety issues associated with wiring systems, requirements must address not only the wiring itself, but also components and devices that are required to adequately install and identify each wire. Various components and devices needed to route and identify wires are critical in ensuring that a proper electrical interconnection is made and maintained.

For the purposes of this NPRM, the term ''wire'' means bare and/or insulated wire used for the purpose of electrical energy transmission, grounding, or bonding. This includes electrical cables, coaxial cables, ribbon cables, power feeders, and databuses.

A proper electrical interconnection between two or more points requires more than just wire. Making the connection in a manner that ensures both functionality and safety requires various types of components, of which wire is one. Therefore, a clear definition of an electrical interconnection is necessary. The proposed regulation provides this and at the same time introduces the term ''electrical wiring interconnection system (EWIS)'' to describe that interconnection. The term EWIS means any wire, wiring device, or combination of these, including termination devices, installed in the airplane for transmitting electrical energy between two or more termination points. The proposed regulation expands on this basic statement to clearly identify which wire-related components are included in the EWIS definition and which are not. Most wires are routed with other wires that make up wire bundles and cable assemblies (or ''looms,'' as they are sometimes called). A single wire may also be routed separately. The same definition of an EWIS is applied to a single wire or to a bundle containing hundreds of wires.

To complete an electrical connection, various types of connectors are necessary. Examples are MS connectors (MS means military specification), D-subminiature connectors, and rack and panel connectors. Any connector used to complete an electrical connection is included in the EWIS definition. The exception to this is the mating connection on those devices that are excluded from the proposed definition. The excepted devices are addressed later in this discussion.

Connector accessories fall under the definition of EWIS. Such accessories include, but are not limited to, backshells, strain reliefs, grommets, and sealing plugs. Electrical connections to devices such as relays, interrupters, switches, contactors, terminal blocks, and feed-through connectors are parts of an EWIS. For example, the connection device on a relay is considered part of the EWIS, but the relay mechanism is not, because it is a termination point. A splice can be considered an electrical connector because it performs the same role as other connection devices by providing an electrical connection between two or more wires. The failure of a splice or relay connection could create a hazardous situation by exposing bare conductors or impairing system functionality.

Although a bus bar is not a ''connector'' in the traditional sense, it is a collector and distribution device for electrical energy and thus must be treated as part of an EWIS.

Wire or wire bundles require devices to physically route and support them, such as clamps, brackets, standoffs, and other such components. These are included in the EWIS definition. Cable ties are included because they are used to hold multiple wires together and in place. The failure of one or more of these EWIS components could affect the ability of the wire to perform its intended function. It could cause collateral damage to other wires in the same or adjacent bundles or cause the bundle to fail in a way that would cause structural damage or ignite flammable material, fluid, or vapors in the area.

Some wires must pass through pressure bulkheads, so a pressure seal is needed. Failure of a pressure seal could cause damage to the wires in the wire bundle and affect the functioning of the system they support. Some wire bundles use shields or braids to protect them from electromagnetic radiation, lightning, abrasion, and other types of physical damage. Failure of the shields or braid could cause, or allow, the wires to be damaged. It could also allow unwanted electrical energy to be coupled into systems and cause system malfunction. Thus, shields, braids, and pressure seals must be considered part of the EWIS and treated as such.

Sometimes adequate physical separation distance is not possible, and some sort of protective sleeving may be

used. Since the sleeving is used to achieve separation, it must be considered part of the EWIS.

Conduits are included in the proposal because they are used to provide protection for wires as well as provide physical separation. Conduits that have electrical termination for bonding are considered part of an EWIS because the failure of the bonding could create a hazardous situation.

The definition of an EWIS includes labels or other means used for identification. This supports the proposed § 25.1711 requiring new identification criteria for wires and other EWIS components. Discussion of the proposed labeling requirements appears under the heading for § 25.1711.

The proposed regulation does not cover portable, carry-on, or other electrical equipment not certified for installation on the airplane under part 25. Examples of items not included are laptop computers and portable audio and/or video or other consumer devices typically carried on-board by passengers for personal use. Increasingly, flight and cabin crew are using laptop computers in the performance of their duties. As stated, laptops are not part of the EWIS definition, but any electrical connection used to support power and/or signal transmission that is part of the airplane TC, and that is used for the laptop or other carry-on items, is covered by the proposed definition.

The proposed EWIS definition does not cover fiber optic cable because fiber optic cable does not transmit electrical energy. But since fiber optics can provide functions (for example, data transmission) similar to those provided by wire, it is being expressly eliminated from the EWIS definition to avoid confusion.

The proposed definition excludes electrical wiring interconnection system components inside avionics equipment (high-frequency communication radio or flight data recorder, for instance), or the mating electrical connectors mounted on that equipment. Such equipment is produced by various manufacturers for use on a broad range of airplane models and is designed and built to various performance and environmental specifications. Environmental testing, either by means of RTCA (Radio Technical Commission for Aeronautics) Document No. RTCA DO–160, EUROCAE 55 specification (specification of the European Organization for Civil Aviation Equipment), or other environmental qualification procedures approved by the FAA, ensures that the EWIS contained within avionics equipment is robust and well suited for the airborne environments in which it will be operated.

This proposal also does not apply to miscellaneous electrical equipment if that equipment has been adequately qualified to environmental conditions and testing procedures approved by the FAA, unless that equipment is specifically included in the proposed § 25.1701 as discussed in the following paragraph.

The definition of EWIS includes electrical wiring interconnection system components inside shelves, panels, racks, junction boxes, distribution panels, back-planes of equipment racks including circuit board back-planes, and wire integration units. We have included the components in this type of equipment because it, unlike avionics equipment, is typically designed and made for a particular airplane model or series of models. The same requirements that apply to airplane EWIS components must also be applied to the components inside that equipment. Avionics components must be sent back to their manufacturer or a specialized repair shop for service. But this type of equipment is maintained, repaired, and modified by the same personnel who maintain, repair, and modify the EWIS in the rest of the airplane. In an electrical distribution panel system, for example, separation must be designed and maintained within the panel just as in the EWIS leading up to that panel. Identification of components inside the panel is just as important as for those outside the panel since the wiring inside the panel is treated much the same. Also, while this type of equipment is designed for its intended function and is manufactured and installed to the same standards as other EWIS, it is typically not qualified to an environmental standard such as RTCA DO–160.

Section 25.1703 Function and Installation: EWIS

Proposed § 25.1703 would require that applicants select EWIS components that are of a kind and design appropriate to their intended function. Factors such as the components' design limitations, functionality, and susceptibility to arc tracking and moisture must be considered when selecting EWIS components.

Section 25.1301 requires that each item of installed equipment be of a kind and design appropriate to its intended function, be labeled (identified), be installed according to any limitations specified for it, and function properly when installed. This is a general ''catch-all'' regulation applicable to equipment and systems certified under subpart F. Because of its generality and the fact that the FAA has not published any advisory circular for this rule, § 25.1301 has not been applied in a standardized way. Currently, § 25.1301 is applicable to wire and its associated components but it does not provide sufficient wire-specific requirements to ensure proper function and installation of EWIS. It does not adequately cover all factors that need to be considered when selecting, identifying, and installing wiring components.

The requirements of § 25.1301 are the basis for the new § 25.1703, but those requirements are supplemented by new ones. Requirements from other existing sections are also moved into the new regulation, so that the proposed rule would specifically apply to EWIS components. Adoption would ensure that the selection of wires and other EWIS components, and their installation, are carried out in a safe, consistent, and standardized manner.

Section 25.1703(a)(1) would require that each EWIS component be of a kind and design appropriate to its intended function. While § 25.1301(a) contains the same requirements, § 25.1703(a)(1) is specific to EWIS components. In this context, the requirement means that components must be qualified for airborne use, or otherwise specifically assessed as acceptable for their intended use. To be ''appropriate'' means that the equipment is used in a manner for which it was designed. For example, a wire rated at 150 degrees Celsius would not be appropriate for installation in an airplane zone where the temperature exceeds 150 degrees Celsius. Wire and other components made for household or consumer products use would not be appropriate for airborne use because they are manufactured for the consumer market and not for use in an airborne environment. Exceptions to this would be wire or other consumer components shown to comply with all the applicable airworthiness requirements of part 25. In the past this showing of compliance has proven to be difficult because manufacturers of consumer products have been reluctant to modify their designs to accommodate aviation use. Aviation use of consumer products represents too small a market.

Other factors that must be considered for EWIS component selection are mechanical strength, voltage drop, required bend radius, and expected service life. Expected service life means the expected service lifetime of the EWIS. This is not normally less than the expected service life of the aircraft structure. If the expected service life requires that all or some of the EWIS components be replaced at certain

intervals, then these intervals must be specified in the ICA as required by § 25.1529.

Section 25.1703(a)(2) requires that EWIS components be installed according to their limitations. As used here, limitations means the design and installation requirements of the particular EWIS component. Examples of EWIS component limitations are maximum operating temperature, degree of moisture resistance, voltage drop, maximum current-carrying capability, and tensile strength. Section 25.1301(c) contains that requirement, but fails to specifically address the unique characteristics of EWIS. EWIS component selection and installation design must take into account various environmental factors including, but not limited to, vibration, temperature, moisture, exposure to the elements or chemicals (de-icing fluid, for instance), insulation type, and type of clamp. For example, wire bundle adhesive clamps are known to work loose during aircraft operation. Attention must be given to the selection of and methods of affixing this type of wire bundle support and it must be shown that this type of clamp is appropriate for the environment in which it will be used.

Section 25.1703(a)(3) would require that EWIS function properly when installed. This is the same requirement as § 25.1301(d). However, the § 25.1301(d) requirement is so general that it is applied in a nonstandardized manner. Sometimes the term ''function properly when installed'' has been interpreted to mean that even non-safety-related functions of a given system must function in the manner for which it was designed. The key word in understanding the intent of this proposed section is ''properly,'' as that relates to airworthiness of the airplane in which the electrical wiring interconnection systems are installed. For an EWIS component to function properly means that it must be capable of safely performing the function for which it was designed. For example, the fact that an airplane's in-flight entertainment (IFE) system fails to deliver satisfactory picture or sound quality is not what the term ''properly'' refers to and is not a certification issue. However, the failure of an EWIS component has the potential for being a safety hazard whether it is part of a safety-related system or an IFE system. Therefore, EWIS components must always function properly when installed, no matter what system they are part of. The guidance material being prepared to accompany the proposed subpart H, AC 25,17XX, ''Certification of Electrical Wiring Interconnection Systems on Transport Category Airplanes,'' will clarify these distinctions.

Section 25.1703(a)(4) is a new requirement to ensure that EWIS components be designed and installed so mechanical strain is minimized. This means the EWIS installation must be designed such that strain on the wires would not be so great as to cause wire or other components to fail. This requirement would ensure that adequate consideration is given to mechanical strain when selecting wire and cables, clamps, strain reliefs, stand-offs, and other devices used to route and support the wire bundle.

Proposed § 25.1703(b) would require that selection of wires for installation takes into account known characteristics of different wire types in relation to each specific application, to minimize risk of damage. It is important to select the aircraft wire type whose construction matches the application environment. The wire type selected must be constructed for the most severe environment likely to be encountered in service. Among other things, the proposed section would ensure that insulation types susceptible to arc tracking be used only in environments that will minimize the likelihood of that phenomenon. Arc tracking is a phenomenon in which a conductive carbon path forms across an insulating surface. A breach in the insulation allows arcing. The arcing carbonizes the insulation. The carbon residue is electrically conductive. The carbon path then provides a short circuit path through which current can flow. This can occur on either dry or wet wires. Certain types of wire insulation are more susceptible to arc tracking than others. Wire insulated with aromatic polyimide is one type that is susceptible to arc tracking. While this type of insulation is well suited for use in very low or high temperature environments, it generally should not be used in areas of an airplane prone to excessive moisture or vibration, such as those areas designated as severe wind and moisture problem (SWAMP) areas without taking into account this insulation property's unique characteristics. Installations exposed to vibration and constant flexing in a moisture-prone area would need wire type suitable for that environment. Proposed § 25.1703(c) would require that design and installation of the main power cables allow for a reasonable degree of deformation and stretching without failure. This requirement now resides in § 25.869(a)(3).

Proposed § 25.1703(d) requires that EWIS components located in areas of known moisture build-up be adequately protected to minimize moisture's hazardous effects. This is to ensure that all practical means are used to ensure damage from fluid contact with components does not occur. Wires routed near a lavatory, galley area, hydraulic lines, severe wind and moisture problem areas such as wheel wells and wing trailing edges, and any other area of the airplane where moisture collection could be a concern must be adequately protected from possible adverse effects of exposure to the types of moisture in these areas.

If a TC includes subpart H in its certification basis, the TC holder would have to show compliance with the proposed EWIS requirements. For future modifications of those TCs, use of the same design practices as those used by the TC holder will enable the modifier to substantiate compliance with the subpart H requirements based on a comparison with the TC holder's methods. If modifiers choose to deviate from those design practices, they would have to substantiate compliance independently. They would also have to consider the design practices used by the TC holder in order to justify their own choice of components.

In summary, these new rules would require the designer and installer to be careful in wire type choices, system design, and installation design. The existing § 25.1301 would be amended to contain a reference to § 25.1703 for EWIS component requirements.

Section 25.1705 System Safety: EWIS

Proposed § 25.1705 would require applicants to perform a system safety assessment of the EWIS. The safety assessment must consider the effects that both physical and functional failures of EWIS would have on the airplane's safety. Based on that safety assessment, it must be shown that each EWIS failure considered to be hazardous is extremely remote. Each EWIS failure considered to be catastrophic must be shown to be extremely improbable and not result from a single failure.

The current regulation requiring system safety assessments is § 25.1309. But current § 25.1309 practice does not lead to the type of analysis that fully ensures all EWIS failure conditions affecting airplane-level safety are considered. This is because the current § 25.1309(a) only covers systems and equipment that are ''required by this subchapter,'' and wiring for nonrequired systems is sometimes ignored. The current safety analysis requirements of § 25.1309(b) and (d) have not always been applied to wire associated with the airplane systems that are covered by the

same rule. When they are, there is evidence of inadequate and inconsistent application. This is especially true for miscellaneous electrical equipment that is not required, such as IFE systems. Traditional thinking about these nonrequired systems has been that, since they are not required, and the function they provide is not necessary for the safety of the airplane, their failure could not affect the safety of the airplane. This is not a valid assumption because failure of an electrical wire can have hazardous or even catastrophic results regardless of the system it is associated with. Wire failure can cause serious physical and functional damage whether the wire or other EWIS components are associated with an autoland system or an IFE system. An example of this is arcing from a shorted wire cutting through flight control cables.

The Aviation Rulemaking Advisory Committee (ARAC), based on the work of its System Design and Analysis Harmonization Working Group, has made recommendations to the FAA for changes to the current § 25.1309. We are evaluating those recommendations. (A copy of those recommendations has been placed in the docket for reference.) We have considered the ARAC recommendations in developing the proposed § 25.1705.

One of the factors we considered in developing the proposed § 25.1705 is that the proposed ARAC revisions to § 25.1309 would exempt certain airplane systems, including the EWIS components associated with those systems, from having to comply with its requirements. Specifically, ARAC recommends that jamming of flight control surfaces or pilot controls covered by § 25.671(c)(3) be exempt from the requirements of § 25.1309. Single failures covered by § 25.735(b)(1) and the failure effects covered by §§ 25.810(a)(1)(v) and 25.812 would also be excepted from the revision to § 25.1309(b) recommended by ARAC. This includes wiring or other EWIS components associated with those systems. In part, proposed § 25.1705 would ensure coverage of the EWIS associated with those systems.

There are many examples of inadequate EWIS designs that have later been determined to be unsafe. Adoption of proposed § 25.1705 would help ensure that those unsafe design practices are not repeated in the future by requiring that EWIS failure conditions affecting airplane-level safety are fully considered. The current § 25.1309 does not provide that assurance.

The FAA has issued over 100 wire-related airworthiness directives (AD) since 1998. Over 50 of those were issued since 1999 to correct wiring deficiencies on the Model MD–11 airplane as delivered by the manufacturer. Airplanes as delivered from all transport category airplane manufacturers have been the subject of mandatory corrective action to correct safety-related wiring problems.

Similarly, the FAA has issued many ADs to correct unsafe EWIS installations because of postdelivery modifications. One example of this involves the IFE system installed on the Swissair MD–11 airplane that crashed off the coast of Nova Scotia and was discussed previously in this document. That modification is a clear case of not considering the effect that EWIS failures can have on airplane safety. The airplane was modified using the supplemental type certification process to add the IFE system. That system contained roughly 750 separate electronic boxes and was installed without an adequate safety assessment per § 25.1309. Although this IFE system consumed relatively large amounts of electrical power and its components and wiring were distributed throughout, below, and above the entire passenger cabin, the applicant did not thoroughly address the safety implications of routing the system wire in the same bundles as wire from other airplane systems, thus raising a concern for common cause failure to multiple essential systems. In many instances the applicant could not identify what airplane systems were associated with the wire in the bundles modified to route the IFE wiring. With the adoption of the proposed § 25.1705, this IFE system, as designed and installed on an airplane with the proposed subpart H in its type certification basis, would be subjected to a more rigorous safety assessment that would identify any inappropriate routing and force a design change.

Many other examples of type design modifications provide evidence that modifiers do not always give due consideration to the impact on safety that installation of a new or modified system may have. Modifiers continue to route the EWIS needed for modifications with, or in close proximity to, wiring from other airplane systems without identifying protection mechanisms for those systems. The current § 25.1309 and revisions to it recommended by ARAC do not contain sufficient requirements to ensure such modifications maintain the level of safety intended by the regulation.

Accordingly, a more comprehensive and specific safety assessment regulation for EWIS is necessary. The objective of the proposed § 25.1705 is to focus attention on EWIS and the safety issues associated with them by using the concepts of § 25.1309 to provide for consistent use of a more thorough and structured analysis of aircraft wiring and its associated components.

The integrated nature of wiring and the potential severity of failures demand a more structured safety analysis approach than that traditionally used under the current, or the ARAC's proposed revision to, § 25.1309. There are more failure modes that need to be addressed than have been addressed previously with traditional analyses (arcing events that occur without tripping circuit breakers, resulting in complete wire bundle failures and fire; or wire bundle failures that lead to structural damage, for example). Current § 25.1309 system safety assessments typically evaluate effects of wire failures on system functions. But they have not considered physical wire failure as a cause of the failure of other wires within the EWIS. The traditional assessments look at external factors like rotor burst, lightning, and hydraulic line rupture, but not at internal factors, like a single wire chafing or arcing event, as the cause of the failure of functions supported by the EWIS. Compliance with the proposed § 25.1705 would require addressing those failure modes at the airplane level. This means that EWIS failures would need to be analyzed to determine what effect they would have on the safe operation of the airplane.

The proposed rule language is consistent with § 25.1309 and is meant to work in conjunction with the § 25.1309 assessments performed on airplane systems. It would require that the probability of a hazardous failure condition be extremely remote and that the probability of a catastrophic failure condition be extremely improbable and not result from a single failure. The terminology and meaning of the classifications of EWIS failure conditions are identical to those proposed by ARAC in August 2002. The proposed AC produced by that working group discussing this, titled ''System Design and Analysis,'' is in the docket for this NPRM. The following table identifies and explains the failure condition terms.

CLASSIFICATION OF FAILURE CONDITIONS

Term	Explanation
No Safety Effect	Failure conditions that would have no effect on safety; for example failure conditions that would not affect the operational capability of the airplane or increase flightcrew workload.
Minor	Failure conditions that would not significantly reduce airplane safety, and involve flightcrew actions that are well within their capabilities. Minor failure conditions may include, for example: • a slight reduction in safety margins or functional capabilities; • a slight increase in flightcrew workload, such as routine flight plan changes; or • some physical discomfort to passengers or cabin crew.
Major	Failure conditions that would reduce the capability of the airplane or the ability of the flightcrew to cope with adverse operating conditions to the extent that there would be, for example: • a significant reduction in safety margins or functional capabilities; • a significant increase in flightcrew workload or in conditions impairing flightcrew efficiency; • discomfort to the flightcrew; or • physical distress to passengers or cabin crew, possibly including injuries.
Hazardous	Failure conditions that would reduce the capability of the airplane or the ability of the flightcrew to cope with adverse operating conditions to the extent that there would be, for example: • a large reduction in safety margins or functional capabilities; or • physical distress or excessive workload such that the flightcrew cannot be relied upon to perform their tasks accurately or completely; or • serious or fatal injuries to a relatively small number of persons other than the flightcrew.
Catastrophic	Failure conditions that would result in multiple fatalities, usually with the loss of the airplane. (**Note:** A catastrophic failure condition was defined differently in previous versions of § 25.1309 and in accompanying advisory material as "a failure condition that would prevent continued safe flight and landing.")

The proposed § 25.1705 would complement the § 25.1309 assessments by raising the quality of the safety assessment with respect to EWIS failures that would not be identified using the traditional methods of compliance with § 25.1309. The analysis required to show compliance with the proposed regulation is based on a qualitative approach to assessing EWIS safety as opposed to a numerical probability-based quantitative analysis. The intent is not to examine each individual wire and its relation to other wires, but rather to ensure that there are no unacceptable hazards to the airplane. This does not preclude the possibility that, should the analysis identify a failure in a given wire bundle or component(s) that may lead to a catastrophic failure condition, the design mitigation process may lead to performing a complete analysis of each wire in the relevant bundle.

The type of analysis used to show compliance with the proposed § 25.1705 can vary depending on the knowledge of the designers or modifiers of an EWIS. As stated earlier, it is important that there is thorough knowledge of what systems and functions the other wires in the same and surrounding bundles support. In the case of a post-TC modification, without this information it would be impossible to state that the modified system could not fail in a way that would cause a hazardous or catastrophic event. If this information is not available to the modifier, then the EWIS system must be designed to accommodate this lack of knowledge. This would typically mean that wire being added for the modification would need to be routed separately from existing airplane wiring.

Flowchart 1 and Flowchart 2, contained in Appendix E of this notice, illustrate the type of analysis necessary to show compliance with the proposed § 25.1705. Two separate cases are considered. Flowchart 1 is applicable to pre-type-certification work and to TCs and STCs when the modifier has all the data necessary to perform the analysis. If the analysis is conducted according to this flowchart, the available data must include identification of systems supported by the EWIS under consideration for modification and the functions associated with them. The original aircraft manufacturer has most of this data and would normally follow the Flowchart 1 method. However, this may not always be the case when the manufacturer modifies an airplane that has been previously modified by another party.

The analysis depicted in Flowchart 2 would apply to modifiers for post-TC modification who cannot identify the systems or functions contained in EWIS being considered for modification.

In both analyses, EWIS functional and physical failures are addressed. It is the physical portion that has been neglected in past system safety analyses. The proposed regulation would require an applicant to identify any physical failure of EWIS that can cause damage to co-located EWIS or other surrounding systems or structure, or injury to people. Once those physical failures are identified, their severity can be determined and design mitigation strategies can be developed and applied. The process is repeated until all known unsafe features are eliminated. The difference between the processes identified in the two flowcharts is that in Flowchart 1, all the systems and associated functions whose wires are in a bundle are known. In Flowchart 2, new wire is routed separately from existing wire. Otherwise, the analysis is the same.

In summary, the need for this new regulation is shown by experience on the part of the FAA and other governmental regulatory authorities and by service histories. Many wire-related incidents and accidents have occurred. Post-TC modifications have repeatedly introduced wiring safety problems. Airplane manufacturers have delivered airplanes that have wiring problems when they leave the factory, or such problems have later developed in service, as evidenced by resulting mandatory corrective actions. Adoption of this proposal would ensure that such problems are fully considered and addressed as part of the type certification process.

Section 25.1709 System Separation: EWIS

Proposed § 25.1709 would require applicants to design EWIS with appropriate separation to minimize the possibility of hazardous effects upon the airplane or its systems.

Safe operation of airplanes depends in part on the safe transfer of electrical energy, a function provided by airplane EWIS. If an EWIS failure should occur, the separation between the failed EWIS and other EWIS and airplane systems

plays an important role in ensuring that any hazardous effects of the failure are mitigated to an acceptable level. Thus, it is vital to design and install wiring systems with adequate separation from those systems whose interaction with the wire could create hazardous effects. Currently, part 25 certification rules do not adequately address wire system separation. The rules currently used to require system separation are § 25.1353(a), (b), and (c), but service experience has shown that compliance with these requirements, with regard to wiring systems, has not always been adequate. This is due in part to their lack of specific wording about which wiring systems are covered and which systems those wires are meant to be separated from. The proposed rule corrects these inadequacies by stating specifically that it applies to each EWIS on the airplane, and mandating specific separation requirements for certain airplane systems known to have potential for creating a hazardous condition. The term ''hazardous condition'' in this proposed rule is used in a different context than it is used in the proposed § 25.1705. Proposed § 25.1705 uses the terms ''hazardous'' and ''catastrophic'' in the context of assigning a numerical probability to failures that can cause a failure condition. Hazardous failure conditions and catastrophic failure conditions are defined in the discussion of the proposed § 25.1705. In proposed § 25.1709, the term hazardous condition means that the applicant must perform a qualitative design assessment of the installed EWIS. This assessment would involve using reasonable engineering and manufacturing judgment and assessing relevant service history to decide whether an EWIS, any other type of system, or any structural component could fail in such a way that a condition affecting the airplane's ability to continue safe operation could result. A numerical probability assessment may still be required under the requirements of the proposed § 25.1705 if the airplane-level functional hazard assessment identifies failures that could affect safe operation of the airplane.

To illustrate the type of assessment required by proposed § 25.1709, consider the following simple example involving the use of wire bundle clamps. Clamps are used to secure a wire bundle to structure in order to hold the bundle in place and route the bundle from one location to another along a predetermined path. An airplane manufacturer, using the criteria contained in the proposed advisory material for 25.1709, determines that a 2-inch separation from hydraulic lines is necessary. The manufacturer further decides that one clamp every 10 inches is needed to maintain that separation. However, there is one localized area where a single clamp failure would potentially create a hazard. This is because the area in question is a high vibration, high temperature area, subject to exposure to moisture. So the clamp in this particular area is exposed to severe environmental conditions that could lead to its accelerated degradation. The manufacturer decides that using just a single clamp every 10 inches in this area would not suffice to preclude a hazardous event. The manufacturer prescribes use of double clamps every 10 inches in that area.

The requirements of proposed § 25.1709 do not preclude use of valid component failure rates if the applicant chooses to use a probability argument in addition to the design assessment to demonstrate compliance. It also does not preclude the FAA from requiring such an analysis if the applicant cannot adequately demonstrate that hazardous conditions will be prevented solely by using the qualitative design assessment.

As used in the proposed rule, the term ''separation'' is a measure of physical distance. The purpose of separation is to prevent hazards of arcing between wires in a single bundle, between two or more bundles, or between an electrical bundle and a non-electrical system or structure. In some cases, the proposal would allow separation to be achieved with a barrier or other means shown to be at least equivalent to the necessary physical distance. However, distance separation is preferred because service experience shows that use of barriers such as conduits can cause wire damage or lead to maintenance errors. In some cases, wire bundle sleeving is used to provide separation, although the sleeving itself is susceptible to the same types of damage as wire insulation.

Determining the necessary amount of physical separation distance is essential. However, the proposed rule does not mandate specific separation distances because each system design and airplane model can be unique, and because manufacturers have differing design standards and installation techniques. Instead it requires that the chosen separation be adequate so that an EWIS component failure will not create a hazardous condition. The following factors must be considered when determining the separation distance:

(1) The electrical characteristics, amount of power, and severity of failure condition of the system functions performed by the signals in the EWIS and adjacent EWIS.

(2) Installation design features, including the number, type, and location of support devices along the wire path.

(3) The maximum amount of slack wire resulting from wire bundle build tolerances and other wire bundle manufacturing variabilities.

(4) Probable variations in the installation of the wiring and adjacent wiring, including position of wire support devices and amount of wire slack possible.

(5) The intended operating environment, including amount of deflection or relative movement possible and the effect of failure of a wire support or other separation means.

(6) Maintenance practices as defined by the airplane manufacturer's standard wiring practices manual and the ICA required by § 25.1529 and proposed § 25.1739.

(7) The maximum temperature generated by adjacent wire/wire bundles during normal and fault conditions.

The FAA recognizes that some airplane models may have localized areas where maintaining the minimum physical separation distance is not feasible. In those cases, other means of ensuring equivalent minimum physical separation may be acceptable, if testing or analysis demonstrates that safe operation of the airplane is not jeopardized. The testing or analysis program must be conservative and consider the worst possible conditions.

Paragraphs (a), (b), (c), and (d) of proposed § 25.1709 contain EWIS-related requirements derived from the existing regulations applying to electrical power generation systems and electrical equipment and installations (§§ 25.1351 and 25.1353). Section 25.1351 does not need any revision to support the proposed § 25.1709, but § 25.1353 is amended to reference § 25.1709.

The proposed requirements of § 25.1709(a) were derived from existing § 25.1353(a). While the requirements of § 25.1353(a) are retained, the portion of that requirement applicable to wiring has been moved to the proposed § 25.1709(a). Further clarification of the requirement is also included in the proposal. Section 25.1353(a) states ''* * * wiring must be installed so that operation of any one unit or system of units * * *.'' Proposed section 25.1709(a) expands on the term ''operation'' to state that it means ''operation under normal and failure conditions as defined by § 25.1309.''

Proposed section 25.1709(b) would require that each EWIS be designed and

installed so that any electrical interference likely to be present in the airplane will not result in hazardous effects on the airplane or its systems. This proposed requirement is based on new text recently added to § 25.1353(a) to harmonize part 25 with the existing text of the JAA JAR 25.1353(a).[5] The text of JAR 25.1353(a) requires that any electrical interference likely to be present in the airplane must not result in hazardous effects on the airplane or its systems except under extremely remote conditions. The proposed § 25.1709(b) is recognition of the fact that electrical interference can be introduced into airplane systems and wiring by coupling between electrical cables or between cables and coaxial lines, as well as by the other equipment that is the subject of § 25.1353(a). The proposed requirement does not adopt the JAR clause ''except under extremely remote conditions.'' This is because the intent of the requirement is not to require a numerical probability assessment of the likelihood of electrical interference or its consequences as described previously. Rather it is meant to convey that under failure conditions that may be caused by electrical inference, the resultant effects should not be such as to prevent continued safe flight of the airplane.

Proposed section 25.1709(c) contains the wire-related requirements of the current § 25.1353(b). These requirements have been expanded to add that not only wires and cable carrying heavy current are covered, but their associated EWIS components are covered as well. The proposal prescribes that any required physical separation must be achieved either by separation distance or by barrier or other means shown to be at least equivalent to an adequate separation distance.

Proposed section 25.1709(d) contains wire-related requirements of existing §§ 25.1351(b)(1) and (b)(2) and would introduce additional requirements. To show compliance with § 25.1709(d), EWIS components associated with the generating system must be considered with the same degree of attention as other components of the system, such as the electrical generators. The proposal prescribes that any required physical separation must be achieved either by separation distance or by a barrier or other means shown to be at least equivalent to an adequate separation distance. Paragraph (d)(1) would introduce a requirement to prohibit the airplane's independent electrical power sources from sharing a common ground terminating location. Paragraph (d)(2) would prohibit the airplane's static grounds from sharing a common ground terminating location with any of the airplane's independent electrical power sources. These two new requirements would help to ensure the independence of separate electrical power sources and to prevent introduction of unwanted interference into airplane electrical power systems from other airplane systems.

Paragraphs (e), (f), (g), and (h) of proposed § 25.1709 contain EWIS-related requirements from § 25.1353(d)(3). These paragraphs contain specific separation requirements for the airplane's fuel, hydraulic, oxygen, and waste/water systems. They require that EWIS have adequate separation from those systems except to the extent necessary to provide any required electrical connection to them. These paragraphs require that EWIS be designed and installed with adequate separation so a failure of an EWIS component will not create a hazardous condition and any leakage from those systems (i.e., fuel, hydraulic, oxygen, waste/water) onto EWIS components will not create a hazardous condition. The proposed requirements recognize the potential catastrophic hazard that could occur should an arcing fault ignite a flammable fluid like fuel or hydraulic fluid. An arcing fault has the potential to puncture a line associated with those systems if adequate separation is not maintained. If there is leakage from one of those systems and an arcing event occurs, fire or explosion could result. Similarly, leakage from the water/waste system can cause damage to EWIS components and adversely affect their integrity. An EWIS arcing event that punctures a water or waste line could also introduce fluids into other airplane systems and create a hazardous condition.

To prevent chafing, jamming, or other types of interference or other failures that may lead to loss of control of the airplane, EWIS in general and wiring in particular must be physically separated from flight or other control cables. Mechanical cables have the potential to cause chafing of electrical wire if the two come into contact. This can occur either through vibration of the EWIS and/or mechanical cable or because of cable movement in response to a system command. A mechanical cable could also damage other EWIS components, such as a wire bundle support, in a way that would cause failure of that component. Also, if not properly designed and installed, a wire bundle or other EWIS component could interfere with movement of a mechanical control cable by causing jamming or otherwise restricting the cable's movement. An arcing fault could damage or sever a control cable, or a control cable failure could cause damage to EWIS if not adequately separated. Therefore, proposed paragraph (i) would require an adequate separation distance or barrier between EWIS and flight or other mechanical control systems cables and their associated system components. It would further require that failure of an EWIS component must not create a hazardous condition and that the failure of any flight or other mechanical control systems cables or systems components must not damage EWIS and create a hazardous condition.

EWIS in general and wiring in particular must be routed away from high-temperature equipment, hot air ducts, and hydraulic, fuel, water, and other lines. There must be adequate separation distance in order to prevent damage to the EWIS caused by extreme temperatures and so that an EWIS failure will not damage the equipment, ducts, or lines. High temperatures can deteriorate wire insulation and other parts of EWIS components, and if the wire or component type is not carefully selected, this deterioration could lead to wire or component failure. Similarly, should an arcing event occur, the arc could penetrate a hot air duct or line and allow the release of high pressure, high temperature air. Such a release could damage surrounding components associated with various airplane systems and potentially lead to a hazardous situation. Paragraph (j) would require that EWIS be designed and installed with an adequate separation distance or barrier between the EWIS components and heated equipment, hot air ducts, and lines.

The needed reliability of some airplane systems, such as an autoland system, requires that independent, redundant systems be used. Loss of one channel of a redundant system would not decrease the ability to continue safe operation. However, if both channels of a two-channel system were lost because of a common failure, the results could be catastrophic. To maintain the independence of redundant systems and

[5] The JAA is the Joint Aviation Authority of Europe and the JAR is its Joint Aviation Requirements, the equivalent of our Federal Aviation Regulations. In the time since these proposals were developed, in 2003, the European Aviation Safety Agency (EASA) was formed. EASA is now the principal aviation regulatory agency in Europe, and we intend to continue to work with them to ensure our proposal is also harmonized with its Certification Specifications (CS). But since the harmonization efforts involved in developing this proposal occurred before EASA was formed, it was the JAA that was involved with them. So while the JAR and CS are essentially equivalent, and in the future we will be focusing on the CS, it is the JAR that will be referred to in the historical background discussions in this proposal.

equipment so that safety functions required for safe operation are maintained, adequate separation and electrical isolation between these systems must be ensured. Paragraph (k) would require that EWIS associated with any system that requires redundancy to meet certification requirements be separated with an adequate separation distance or barrier.

Paragraph (l) of proposed § 25.1709 would require that EWIS be designed and installed so they are adequately separated from aircraft structure and protected from sharp edges and corners. The purpose of this proposal is to minimize the potential for abrasion/chafing, vibration damage, and other types of mechanical damage. Such protection is necessary because over time the insulation on a wire that is touching a rigid object, such as an equipment support bracket, will fail and expose bare wire. This can potentially lead to arcing that could destroy that wire and other wires in its bundle. Depending on the amount of electrical energy being carried by the failed wire, structural damage may also occur.

Section 25.1711 Component Identification: EWIS

Proposed § 25.1711 would require applicants to identify EWIS components using consistent methods that facilitate easy identification of the component, its function, and its design limitations. For EWIS associated with flight-essential functions, identification of the EWIS separation requirement would also be required.

An important aspect of ensuring safe operation of airplanes is making sure that EWIS components are properly identified. This is necessary so that modification designers, maintenance personnel, and inspectors can easily determine the function of the associated system, together with any associated separation requirements and design limitations. Clear labeling of EWIS components and easy-to-understand identification aids allow installers, inspectors, and maintainers to readily ascertain that correct system components are installed as designed, and allow modifiers to add systems with due regard to the existing protection and separation requirements.

The current part 25 certification requirement for equipment identification is § 25.1301(b) and it is applicable to ''each item of installed equipment.'' This rule is inadequate for EWIS because it does not provide the specific requirements that have been determined necessary for identifying EWIS components. Specific EWIS component identification needs to be done to prevent modifiers from unintentionally introducing unsafe design or installation features on previously certified airplanes when they install new or modified systems. Component identification would also make those performing maintenance and inspections more aware of what systems are associated with specific EWIS in the areas undergoing maintenance or inspection.

When the FAA first certifies an airplane type design, its systems are designed and installed to ensure safe operation of the airplane. Systems essential to that safe operation are often designed and installed to ensure redundancy of the system function. They have two or more circuits, or channels, that can perform the same function in case one of them malfunctions. Separate circuits (channels) typically have their own sensors, wiring, and equipment. This helps ensure that a common failure cannot cause failure of the entire system.

An example of this is the autoland system on modern transport category airplanes. The autoland system allows airplanes to land during adverse weather conditions that would otherwise prevent landing with manual techniques that rely on the flightcrew's ability to see the runway. Typically the autoland system has three channels that are physically separated and electrically segregated, so if one channel fails, the airplane can safely continue the autoland procedure. The failure of an autoland system at a critical phase of flight can be catastrophic to the airplane and its passengers. The integrity of an autoland system's design could be compromised by systems installed after certification of the autoland system. One way to prevent this is to clearly identify EWIS associated with the autoland in a way that makes it easy to see that it is associated with a critical system. Such identification would aid the designers and installers of the new system by alerting them to the presence of the critical system and allow appropriate design and installation decisions, preventing degradation of the safety of the autoland system.

The reverse is also true. For example, suppose an in-flight entertainment system is installed on an airplane and, after that installation, an autoland system is to be installed. The designers and installers of the autoland system would need to be able to identify EWIS associated with the IFE system so they do not mix IFE system EWIS with the autoland system EWIS. The IFE system is a passenger convenience item and its functionality is not important to the continued safe operation of the airplane. When the zone containing the autoland system EWIS is undergoing inspections or maintenance, easy identification of the EWIS will alert inspection or maintenance personnel to use extra caution in the area.

Proposed § 25.1711(a) uses language that is similar to existing § 25.1301(b) but is specifically applicable to EWIS components. The proposal adds the word ''consistent'' to stress the need for consistency in EWIS identification to avoid confusion and mistakes during airplane manufacturing, modification, and maintenance. This means the FAA expects airplane manufacturers to develop an EWIS identification method that facilitates easy identification of the systems that any specific EWIS component supports and use that identification method in a consistent manner throughout the airplane. The consistent identification method must be used for new type certifications and changes to those designs. Proposed § 25.1711(e) would require that modifications to type designs use EWIS identification methods that are consistent with the identification method of the original type design. The proposed requirements of paragraph (e) are discussed later in this document.

Paragraph (b) would impose additional requirements for identification detail, when assessed in accordance with the proposed requirements of § 25.1705, for EWIS components associated with:

- Systems required for safe flight and landing.
- Systems required for egress.
- Systems with potential to affect the flightcrew's ability to cope with adverse operating conditions.

Paragraph (c) would require that identifying markings required by paragraphs (a) and (b) of the proposal remain legible throughout the design life of the component. As most wire installations are designed to remain on the airplane throughout the airplane's service life, this means the identification marks must be able to be read to support the intended purpose of the markings for the life of the airplane. The method of marking must take into account the environment in which the EWIS component will be installed.

Paragraph (d) would require that the means used to identify an EWIS component does not have an adverse effect on the component's performance throughout its design life. Certain wire marking methods have the potential to damage the wire's insulation. Hot-stamp marking is one such method. According to SAE (Society of Automotive Engineers) aerospace information report

AIR5575, ''Hot Stamp Wire Marking Concerns for Aerospace Vehicle Applications,'' a copy of which is included in the docket, the hot-stamp marking method is not well suited for today's generation of aircraft wiring. As noted in the SAE document, wire insulation has become markedly thinner over the years since the procedure was first introduced in the 1940s. Because of this, problems have arisen over wire damage from excessive penetration by the hot-stamp process. The document further states: ''The frequent need for adjustments in temperature, pressure, and swell time inherent to achieving legible hot stamp wire marking provides many opportunities for error. The controls, methods, and guidance necessary to achieve satisfactory performance with hot stamp marking are often not made available to operators in smaller wire shops.''

The FAA concurs with this assessment. If damage to the insulation occurs during the marking process, it may fail later in service after it has been exposed to the sometimes-harsh environmental conditions of aircraft use. While the proposed regulation does not prohibit use of hot-stamp marking, its use is not encouraged. To comply with this paragraph, if the hot stamp marking process is used, the guidelines of SAE recommended practice ARP5369, ''Guidelines for Wire Identification Marking Using the Hot Stamp Process'' or equivalent must be followed. A copy of this document is in the docket.

In some cases it may not be practicable to mark an EWIS component directly, because of component size or identification requirements. In this case other methods of identification such as a label or sleeve must be used.

Paragraph (e) would require that EWIS modifications to the type design take into consideration the identification scheme of the original type design. This is to ensure that the consistency required by proposed § 25.1711(a) is maintained when a modification is installed. The intent of this requirement is to provide continuity in the methods used for EWIS identification on a particular model. It is not the intent of the requirement to impose on the modifier the exact wire identification methods of the airplane manufacturer. However, since the purpose of proposed § 25.1711 is to make it easy to identify those airplane systems essential to the safe operation of the airplane, it is in the best interest of safety that designers of any modifications to the original design consider the approved type design identification methods. For example it would not be appropriate for a modifier to use purple wire to identify a specific flight critical system when the approved type design used the color green, especially if the type design already uses purple wire to identify non-essential systems. Such a scheme could cause confusion and lead future modifiers or maintainers to believe that the routing of purple wires with green wires is acceptable. This is just an example and should not be construed to say that flight critical systems should use green wire or non-essential systems purple wire. The regulation does not prescribe a particular method for identification, but is meant to ensure that the consistency of the identification method required by paragraph (a) is maintained throughout the life of the airplane.

Section 25.1713 Fire Protection: EWIS

Proposed § 25.1713 would require that EWIS components meet the applicable fire and smoke protection requirements of § 25.831(c). It would further require that EWIS located in designated fire zones be at least fire resistant. Insulation on electrical wires and cables would also be required to be self-extinguishing when tested in accordance with the applicable portions of Appendix F, Part I, of part 25.

During an emergency situation it is important that airplane systems needed by the flightcrew to effectively deal with the emergency be operative. To help ensure this, § 25.869 requires that electrical systems components meet certain flammability requirements and be designed and installed to minimize probability of ignition of flammable fluids and vapors. Currently, § 25.869(a) is applicable to wiring. The proposal is to move the requirements of § 25.869(a) related to protection of wiring from fire and put them into the proposed § 25.1713. This will allow easy identification of the requirements for fire protection of EWIS, because they will be found in the proposed new subpart H, which is dedicated to EWIS regulations. Requirements of § 25.869 dealing with isolation from flammable fluid lines have been moved to the new § 25.1709 and requirements for allowance for deformation and stretching have been moved to § 25.1703. As a result, we are amending § 25.869 to accommodate this change.

Section 25.1717 Electrical Bonding and Protection Against Static Electricity: EWIS

Proposed § 25.1717(a) would require that EWIS used for electrical bonding and protection against static electricity meet the requirements of § 25.899. Proposed § 25.1717(b) would require that EWIS components used for any electrical bonding purposes (not just that used for protection against static electricity) provide an adequate electrical return path under both normal and fault conditions.

The buildup and subsequent discharge of static electricity has the potential to create hazardous conditions for both airplane systems and people. Static electricity can injure people. It can also interfere with installed electrical/electronic equipment and cause ignition of flammable vapors. We are proposing to adopt § 25.899 (as discussed in the section headed ''Electrical System Harmonization Rules'') to highlight the importance of considering electrical bonding and static electricity as a full aircraft requirement and to prevent hazardous effects of static electricity. The proper design and installation of EWIS components used to accomplish such protection is critical to ensure the hazardous effects of static discharge are minimized. For example, the cross-sectional area of bonding paths used for primary bonding paths is important in ensuring that a low electrical impedance is obtained, as is the method in which the bonding connection is made to the airplane structure. Thus, EWIS must be fully considered when designing and installing protection from the adverse effects of static electricity. The proposed § 25.1717 highlights the importance EWIS has in providing this protection and requires that EWIS components meet the same requirements as other components used to show compliance with § 25.899.

The ARAC Electrical Systems Harmonization Working Group recommended the adoption of JAR 25.1353(e) as paragraph (e) of § 25.1353. The JAR requires that electrical bonding provide an adequate electrical return path under both normal and fault conditions on airplanes with grounded electrical systems. ATSRAC recommended that the requirements of JAR 25.1353(e) be moved in their entirety to the proposed subpart H. We agree with that recommendation and, instead of adopting JAR 25.1353(e) as § 25.1353(e), we are proposing to adopt it as § 25.1717(b).

Section 25.1719 Systems and Functions: EWIS

Proposed § 25.1719 would require that EWIS components be considered in showing compliance with the certification requirements of specific airplane systems. Many of the current part 25 sections contain system specific requirements that apply to EWIS in an

indirect way. The EWIS associated with such systems play an integral role in ensuring the safe operation of the system and of the airplane. In general, the EWIS associated with any airplane system needs to be considered an integral part of that system and must be given the same design and installation attention as the rest of the system. The proposed § 25.1719(a) contains this general requirement, while paragraph (b) of the proposal identifies specific sections of part 25 that are associated with airplane systems where wire and its associated components play an important part in ensuring safety. These specific part 25 sections contain requirements that do not lend themselves to creating a separate EWIS-based Subpart H requirement.

It is the intent of the proposed § 25.1719 to require that EWIS be designed and installed to support systems required for type certification or by operating rules, including those systems addressed by the regulations specifically listed in paragraph (b) of the proposal. They must be considered part of those systems, and be given the same design and installation considerations as the rest of the system. While paragraphs (a) and (b) may seem redundant, we have listed specific sections in (b) to ensure that applicants are aware of the need to give EWIS associated with those systems the same consideration as the other components of those systems. We consider the general requirements of (a) necessary because there may be other regulations where EWIS must be considered in showing compliance with those regulations. It also ensures that EWIS is given full consideration for any system-related regulation adopted in the future.

Section 25.1721 Circuit Protective Devices: EWIS

Proposed § 25.1721 would require that electrical wires and cable be compatible with the circuit protective devices required by § 25.1357.

We recently adopted § 25.1353(d)(1) based on recommendations of ARAC, as part of the effort to harmonize the requirements of JAA JAR 25 and FAA 14 CFR part 25. Paragraph (d)(1) requires that electrical cables be compatible with the circuit protection devices required by § 25.1357, so that a fire or smoke hazard cannot be created under temporary or continuous fault conditions. That requirement would be moved from § 25.1353(d)(1) into the proposed § 25.1721 in its entirety. The proposal also adds the word ''wire'' to the requirement. This is because this requirement applies to all sizes of wire, not just heavy-current-carrying cables.

Section 25.1723 Instruments Using a Power Supply: EWIS

The proposed § 25.1723 would require that EWIS components associated with flight and navigation instruments using a power supply be designed and installed so that compliance with § 25.1331 is ensured.

Section 25.1331 requires that flight and navigation instruments using a power supply must, in the event of the failure of one power source, be supplied by another power source. No change is proposed to the wording of that section.

Section 25.1725 Accessibility Provisions: EWIS

The proposed new § 25.1725 would require that means be provided to allow for inspection of EWIS and replacement of their components as necessary for continued airworthiness.

Currently, § 25.611 requires that means must be provided to allow inspection, replacement of parts, adjustment, and lubrication as necessary for principal structural elements and control systems. While wiring systems are not specifically referred to in the existing rule, the ''accessibility'' concept is easily applied to EWIS. Many of the wiring systems on airplanes today are very difficult to access and inspect. We now have an increased awareness of the importance of inspecting wiring for separation and for contamination and damage in order to ensure proper functioning, maintenance, and safety. We also know that when adjacent structures must be removed to allow access to wire installations, new possibilities for contamination, chafing, and other types of damage are introduced. Section 25.611 would be amended to specify that EWIS must meet the accessibility requirements of § 25.1725.

The intent of proposed § 25.1725 is to ensure that EWIS components be installed so that inspections, tests, repairs, and replacements can be undertaken, and that these can be carried out with a minimum of aircraft disassembly. This proposal would facilitate the proposed implementation of the new wiring inspection programs developed under proposed § 25.1739 and the operating rules contained in this proposal.

Section 25.1727 Protection of EWIS

Proposed § 25.1727 would require that cargo or baggage compartments not contain any EWIS whose failure would adversely affect safe operation. It would also require that all EWIS be protected from damage by movement of people.

Section 25.855(e) requires that no cargo or baggage compartments may contain any controls, wiring, lines, equipment, or accessories whose damage or failure would affect safe operation of the airplane unless they are protected so that they cannot be damaged by movement of cargo in the compartment and their breakage or failure will not create a fire hazard. The proposed regulations would remove the word ''wiring'' from the current language and move those requirements, as they apply to EWIS, to the proposed § 25.1727(a). Proposed § 25.855(j) would mandate that cargo or baggage compartment EWIS components must meet the requirements of § 25.1727(a).

The proposed § 25.1727(b) and (c) are new EWIS requirements that currently don't exist in part 25. Paragraph (b) would require that EWIS be designed so that damage and risk of damage from movement of people in the airplane during all phases of flight, maintenance, and service, be minimized. Paragraph (c) would require designers to minimize damage and risk of damage to EWIS by items carried onto the airplane by passengers, cabin crew, and flightcrew. These two new requirements are justified by service experience that shows wires can easily be damaged by movement of people on the airplane and by items carried on board.

Paragraph (b) would require that EWIS designers and installers consider such things as the routing of wires that could be damaged by personnel in the cargo compartments. For example, EWIS would have to be designed and installed in ways that prevent their use as hand- or footholds as much as practicable. It would further require that EWIS be protected from damage by people in the cabin or flight deck. More and more wiring is being routed to passenger seats to support increasingly complex passenger convenience features. If an airplane is equipped with seat-back monitors, for example, the electronic components necessary to support the monitor are typically mounted underneath the seat. This requires wire routing to the seats, usually through the seat tracks (structural channels used to fasten the seats to the floor) or from the side wall directly next to the seat. Many wires mounted on or under the seats have been damaged by passengers. In one case an airplane was operated with wires lying on the floor in the area where a passenger would put his feet. The wires had become dislodged from the seat track. This not only exposed the wires to damage but also posed a potential electrical shock risk to the passenger. In other cases, wires have been routed to the seats through holes cut into the cabin side wall, exposing them to damage from both passengers

and carry-on items stored beneath the seat or between the side wall and seat.

Section 25.1729 Flammable Fluid Fire Protection: EWIS

The proposed § 25.1729 would require that EWIS components be considered a potential ignition source in each area where flammable fluid or vapors might escape by leakage of a fluid system and must meet the requirements of § 25.863.

The current § 25.863 mandates that, in each area where flammable fluids or vapors might escape by leakage of a fluid system, there must be means to minimize the probability of ignition, and resultant hazards if ignition does occur. Possible ignition sources, including overheating of equipment, malfunctioning of protective devices, and electrical faults must be considered in showing compliance with this rule. Many types of electrical faults could cause ignition. Among them are sparks emitting from an avionics component, overheated electrical component surfaces, and arcing from electrical wiring. The wording of § 25.863 would not change.

Section 25.1731 Powerplants: EWIS

The proposed § 25.1731 specifies that EWIS associated with any powerplant must be designed and installed so that failure of an EWIS component will not prevent continued safe operation of the remaining powerplants or require immediate action by any crewmember for continued safe operation, in accordance with § 25.903(b). It would also mandate that design precautions be taken to minimize hazards to the airplane because of EWIS damage in the event of a powerplant rotor failure or a fire originating in the powerplant that burns through the powerplant case, in accordance with § 25.903(d)(1). The purpose of this section is to ensure proper consideration of EWIS in evaluating powerplant installation designs.

The current § 25.903(b) requires, among other things, that powerplants be arranged and isolated from each other to allow operation, in at least one configuration, so that failure or malfunction of any engine, or of any system that can affect the engine, will not prevent continued safe operation of the remaining engines or require immediate action by any crewmember for continued safe operation. Section 25.901(d)(1) requires that design precautions be taken to minimize hazards to the airplane in the event of an engine rotor failure or a fire originating within the engine that burns through the engine case.

Section 25.1733 Flammable Fluid Shutoff Means: EWIS

Proposed § 25.1733 would require that EWIS associated with each flammable fluid shutoff means and control be ''fireproof'' (as defined in § 1.1) or located and protected so that any fire in a fire zone will not affect operation of the flammable fluid shutoff means, in accordance with § 25.1189.

Section 25.1189 requires that each engine installation and fire zone have a means to shut off or otherwise prevent hazardous quantities of fuel, oil, deicer, and other flammable fluids from flowing into or through any designated fire zone. No change is proposed for that section.

Section 25.1735 Fire Detector Systems, General: EWIS

Proposed § 25.1735 would require that EWIS associated with any installed fire protection system be considered in showing compliance with the applicable requirements for that particular system. This would be a new requirement. It does not currently exist in part 25. The current part 25 regulations contain fire detection system requirements for powerplants (§ 25.1203), lavatories (§ 25.854), and cargo compartments (§§ 25.855, 25.857 and 25.858). Each fire detection system requires electrical wire. Failure of this wire could lead to inability of the detection system to function properly. The wire and other associated EWIS components must be considered an integral part of the fire detection system and meet the requirements of the applicable regulation. The proposal would apply to all required fire protection systems with the exception of powerplants and APUs. Requirements for EWIS associated with powerplant and APU fire detection systems are contained in proposed § 25.1737.

Section 25.1737 Powerplant and APU Fire Detector System: EWIS

Proposed § 25.1737 would require that EWIS that are part of a fire or overheat detector system located in a fire zone be at least fire-resistant, as defined in § 1.1. It would also require that EWIS components of any fire or overheat detector system for any fire zone may not pass through another fire zone unless:

- They are protected against the possibility of false warning caused by fire in the zone through which they pass, or
- Each zone involved is simultaneously protected by the same detector or extinguishing system.

In addition, the proposal would require that EWIS that are part of a fire or overheat detector system in a fire zone meet the requirements of § 25.1203.

The current § 25.1203 requires approved, quick acting fire or overheat detectors in each designated fire zone, and in the combustion, turbine, and tailpipe sections of turbine engine installations, to provide prompt indication of fire in those zones. The present rule does contain requirements for wire used in the fire detection systems. But to increase visibility of the related EWIS requirements and to gather them into one central place, a new rule devoted specifically to fire detector system EWIS is proposed.

Existing § 25.1203 would be amended to reference the new § 25.1737, thus effectively closing the loop on requirements.

Section 25.1739 Instructions for Continued Airworthiness: EWIS

Proposed § 25.1739 would require that applicants prepare EWIS ICA in accordance with the requirements of Appendix H to part 25. The proposed EWIS ICA requirements are discussed in the next section of this document.

B. Part 25 Subpart I—Continued Airworthiness and Related Part 25 Changes

As discussed below, the following proposals are applicable to holders of existing TCs for transport category airplanes and applicants for approval of design changes to those certificates. On July 12, 2005, we issued policy statement PS–ANM110–7–12–2005, ''Safety—A Shared Responsibility—New Direction for Addressing Airworthiness Issues for Transport Airplanes'' (70 FR 40166). The policy states, in part, ''Based on our evaluation of more effective regulatory approaches for certain types of safety initiatives and the comments received from the Aging Airplane Program Update (July 30, 2004), the FAA has concluded that we need to adopt a regulatory approach recognizing the shared responsibility between design approval holders (DAH) and operators. When we decide that general rulemaking is needed to address an airworthiness issue, and believe the safety objective can only be fully achieved if the DAHs provide operators with the necessary information in a timely manner, we will propose requirements for the affected DAHs to provide that information by a certain date.''

We believe that the safety objectives contained in this proposal can only be reliably achieved and acceptable to the FAA if the DAHs provide the operators with the EWIS- and fuel-tank-system-

related maintenance information required by the proposed operational rules for parts 91, 121, 125, and 129. Our determination that DAH requirements are necessary to support the initiatives contained in this proposal is based on several factors:

• Developing EWIS and fuel tank system ICA is complex. Only the airplane manufacturer, or DAH, has access to all the necessary type design data needed for the timely and efficient development of the required EWIS and fuel tank system maintenance tasks.

• FAA-approved EWIS and fuel tank system ICA need to be available in a timely manner. Due to the complexity of these ICA, we need to ensure that the DAHs submit them for approval on schedule. This will allow the FAA Oversight Office having approval authority to ensure that the ICA are acceptable, are available on time, and can be readily implemented by the affected operators. Additionally, accurate and timely information is necessary to ensure alignment with the requirements of the Fuel Tank Safety Rule (FTSR). The compliance deadline for the operational requirements of the FTSR was extended to facilitate this alignment, as stated in the **Federal Register** notice '' Fuel Tank Safety Compliance Extension (Final Rule) and Aging Airplane Program Update (Request for Comments)'' (69 FR 45936).

• The proposals in this NPRM affect a large number of different types of transport airplanes. Because the safety issues addressed by this proposal are common to many airplanes, we need to ensure that technical requirements are met consistently and the processes of compliance are consistent. This will ensure that the proposed safety enhancements are implemented in a standardized manner.

• The safety objectives of this proposal need to be maintained for the operational life of the airplane. We need to ensure that future design changes to the type design of the airplane do not degrade the safety enhancements achieved by the initial incorporation of EWIS and fuel tank system ICA. We need to be aware of future changes to the type designs to ensure that these changes do not invalidate the maintenance tasks assigned to a particular type design when the ICA are first developed under the requirements of this proposal.

Based on the above reasons and the stated safety objectives of FAA policy PS–ANM110–7–12–2005, we are proposing to implement DAH requirements applicable to EWIS and fuel tank system ICA.

In the past, we have issued a similar requirement in the form of a special federal aviation regulation (SFAR). But SFARs appear in various places in the CFR and are difficult to reference as a whole. The FAA believes that placing these types of requirements in a new subpart of part 25, which contains the airworthiness standards for transport category airplanes, would provide a single, readily accessible location for this type of requirement. Therefore, we are proposing new subpart I to part 25 to contain these requirements.

In preliminary discussions with foreign airworthiness authorities of the concept of this new subpart, they have expressed concerns that their regulatory systems may not be able to accommodate these types of requirements in their counterparts to part 25. While agreeing on the need for these types of requirements, they have suggested that it may be more appropriate to place them in part 21 or another location. As discussed below, because we expect these new subpart I requirements to be similar to new part 25 airworthiness standards, we have tentatively decided to place them in part 25. However, we specifically request comments on the appropriate location of these requirements, particularly from the foreign authorities. If, based on comments received, we conclude that another location is more appropriate, we may move them in the final rule. Because such a move would not affect the substance of the requirements themselves, we would not consider this to be an expansion of the scope of this rulemaking that would require additional notice and comment procedures.

Section 25.1 Applicability

As stated in § 25.1, part 25 currently prescribes airworthiness standards for issuance of TCs, and changes to those certificates, for transport category airplanes. As discussed in more detail above, with this NPRM the FAA is proposing to expand the coverage of part 25 to include a new subpart I containing requirements that must be complied with by current holders of these certificates. Therefore, we are proposing to amend § 25.1, ''Applicability,'' to state that part 25 also includes requirements for holders of these design certificates. As discussed in the FAA's final rule, ''Fuel Tank Safety Compliance Extension and Aging Airplane Program Update'' (69 FR 45936), this NPRM is one of several proposals for adoption of these kinds of requirements for current holders of type certificates.

A theme common to this and other possible subpart I proposed rules is that the rulemaking projects include proposals for changes to operational rules to require operators to implement programs or take other actions that the FAA has determined are necessary for safety. In several recent rules we have adopted operational requirements without a corresponding requirement for design approval holders to develop and provide the necessary data and documents to support the operators' compliance. The difficulty encountered by operators in complying with these rules has convinced us that the corresponding design approval holder requirements are necessary to enable operators to comply by the regulatory deadlines.

Section 25.2 Special Retroactive Requirements

Section 25.2 currently contains ''special retroactive requirements.'' These requirements are ''retroactive'' in the sense that they require applicants for changes to TCs to comply with requirements that were not applicable to the original TC. As discussed below, proposed subpart I would have a similar effect, in that it would impose new requirements on both existing design certificate holders and applicants for changes to those certificates. Therefore, we are proposing to amend § 25.2 to make reference to proposed subpart I.

Section 25.1801 Purpose and Definition

Paragraph (a) of this section states that this subpart would establish requirements for holders of TCs to take actions necessary to address particular safety concerns or to support the continued airworthiness of transport category airplanes. Such actions may include, but are not limited to, performing assessments, making design changes, developing revisions to ICA, and making necessary documentation available to affected persons.

The specific applicability of each subpart I rule will be established as part of the rulemaking adopting each rule. Generally this subpart would also apply to applicants for type certificates and changes that are pending as of the effective date of this rule. It would also apply to future applicants for changes to existing type certificates. Under § 21.101, the FAA may determine that it is not appropriate to require such applicants to comply with new airworthiness standards, such as proposed new subpart H. However, it is appropriate for them to comply with the same requirements as existing certificate holders. Otherwise, the safety

improvements that result from type certificate holder compliance with these requirements could be undone by later modifications.

For example, in the case of this proposed rule, as discussed below, operators would be required to revise their maintenance programs based on EWIS ICA developed by the type certificate holder. Unless future STC applicants are required to provide similar ICA for their modifications, the TC holder's ICA could become obsolete or, in some cases, even provide incorrect and potentially unsafe information as applied to the STC holder's modification. In other cases, because subpart I rules accompany corresponding operating requirements, failure of an STC applicant to comply with a subpart I rule could make it impossible for an operator to comply with the corresponding operating requirement. Subpart I does not apply to future applicants for TCs, because those applicants will be covered by other proposed changes to part 25, including Appendix H.

Therefore, adoption of a new subpart I rule would also necessitate new requirements for certification of changes to TCs that are in addition to the requirements that are specified under § 21.101. Under that section, if a change is ''significant'' and certain other criteria are met, the applicant would have to show compliance with the latest airworthiness requirements. For example, an applicant applying for such a change after this final rule becomes effective would have to comply with the proposed EWIS requirements in subpart H. Even if we determine that these broader regulations do not apply, the applicant for a change must still comply with the subpart I rule.

Paragraph (b) of this section provides a definition of the term ''FAA Oversight Office.'' The FAA Oversight Office is the aircraft certification office or office of the Transport Airplane Directorate with oversight responsibility for the relevant TC or STC, as determined by the Administrator. As stated later in the discussion of the proposed operating rules, the primary means for operators to comply with those requirements would be by implementing programs or taking other actions developed by the TC and STC holders under this proposed subpart. In each case, to ensure compliance with the relevant subpart I rule, the TC and STC holder's compliance documentation (for example, in this case, EWIS ICA) must be submitted to the FAA Oversight Office. Because we expect this will be a standard approach to compliance with the requirements of this subpart, we are including this definition in this section to avoid having to repeat it in each section within this subpart.

Section 25.1805 Electrical Wiring Interconnection Systems (EWIS) Maintenance Program

This proposal would apply to holders of TCs and to applicants for new TCs, amended TCs, and supplemental TCs if the application was filed before the effective date of this rule and the certificate was issued on or after the effective date of this rule. It would also apply to future applicants for approval of changes to existing TCs.

Paragraph (a) states that this rule would apply, with some exceptions, to transport category turbine-powered airplanes with a maximum type-certificated capacity of 30 or more passengers, or a maximum payload capacity of 7500 pounds or more resulting from the original certification of the airplane or later increase in capacity. This would result in the coverage of airplanes where the safety benefits and the public interest are the greatest.

The reference to the originally certificated capacity, or later increase in capacity, is intended to address two situations:

- In the past, some designers and operators have tried to avoid applying requirements mandated only for airplanes over specified capacities by getting a design change approval for a slightly lower capacity. By referencing the capacity resulting from original certification, this proposal would remove this possible means of avoiding compliance.
- It is also possible that an airplane design could be originally certified with a capacity slightly lower than the minimum specified in this section, but through later design changes, the capacity could be increased above this minimum. The reference to later increases in capacity would ensure that, if this occurs, the design would have to meet the requirements of this section.

Compliance is not proposed for airplanes with a certificated passenger capacity of fewer than 30 passengers, or having a maximum capacity of less than 7500 pounds payload resulting from original certification, because it is not clear at this time that the possible benefits for those airplanes would be proportionate to the cost involved. The FAA intends to evaluate the merits of applying these requirements to those airplanes. We are currently working with ATSRAC to assess how these issues might be addressed in those transport category airplanes. We request comments on the feasibility and benefits of requiring holders of TCs for those airplanes to comply with these requirements.

This proposed rule, as it applies to EWIS, is not applicable to holders of existing (already issued) STCs. Often, the wire design for STC installations of EWIS was based on operator or repair station standard practices and therefore details of the installation are not available. In the cases where such information is available, it would usually indicate that the wiring for the modification follows the same path, or is in the same airplane zone, as the wiring in the original type design. We anticipate that operators would inspect those areas while performing the TC holder's EZAP program. We also expect that any possible discrepancies will be further mitigated by operators incorporating applicable EWIS maintenance tasks into the maintenance program for that zone. Accordingly, the FAA has decided not to require compliance with this section for existing STCs. However, if an existing STC is amended, this section would apply to the amendment.

TC holders, who design EWIS on airplanes, are the technical experts who possess information about those systems. This proposal would apply to the following:

- TC holders.
- Applicants for TCs and for approval of design changes to existing TCs whose applications are pending when this rule becomes effective.
- Future applicants for approval of design changes to existing TCs.

Section 25.1805(b) would require TC holders to complete a comprehensive assessment of the EWIS of each ''representative'' airplane for which they hold a TC, develop inspection and maintenance instructions for them, and incorporate those instructions into the airplane's ICA. The ''representative'' airplane is defined as the configuration of each model series airplane that incorporates all the variations of EWIS used on that model, and that includes all TC-holder-designed modifications mandated by AD, as of the effective date of this rule.

For example, for the Boeing Model 737, the representative airplane would be the configuration of each of the airplane series, 737–100 through 737–900 that incorporates all the variations of EWIS used in producing each airplane series. The purpose of this definition is to ensure that the TC holder considers the full range of EWIS configurations that may affect the results of the EZAP. Further, AD 99–03–04 applies to all Boeing Model 737–100, –200, –300, –400, and –500 series

airplanes. It requires installation of components to provide shielding and separation of the fuel system wiring from adjacent wiring. It also requires installation of flame arrestors and pressure relief valves in the fuel vent system. Boeing would be required to develop ICA for each of those series airplanes as modified by installation of these components and all other modifications mandated by ADs.

The purpose of including these mandated design changes is to ensure that the TC holder's EZAP addresses the existing configuration of airplanes in the operating fleet, rather than just the configuration produced and delivered by the manufacturer.

Applicants for approval of design changes would be required to evaluate the effect of their proposed change on the EWIS ICA developed by the TC holder for the representative airplane and to develop EWIS ICA to address those effects. For TC holders, this requirement would apply to any design changes that may affect the ICA for the representative airplane. This includes service bulletins describing such design changes. Under § 21.113, these design changes are amendments to the TC.

A description of what must be included in those ICA, and the EZAP that must be used to develop them, is contained in the section of this preamble discussing the proposed revision to Appendix H, part 25.

The requirement for ICA was effective on January 28, 1981. TC holders whose application was dated before that date are not subject to that requirement. This proposal would require TC holders who do not have ICA for specific airplane models to create EWIS ICA for them. As discussed below, air carriers and operators of those airplanes would then be required to revise their maintenance or inspection programs based on the new ICA for EWIS and fuel tank systems.

As discussed earlier, SFAR 88 requires TC holders to develop maintenance and inspection instructions to assure the safety of the fuel tank system. Proposed § 25.1805(b) would require that TC holders align the fuel tank system instructions with the results of the EZAP applied to EWIS to ensure compatibility and minimize redundancies. All EWIS would be subject to review in developing the EWIS ICA, and the appropriate instructions for their maintenance and inspection would be required. But some EWIS are also part of the fuel tank system. The requirements for their maintenance and inspection might be more specific than those for wiring in general, and might contain additional requirements. That is why the two must be reviewed for compatibility.

As discussed later in this section, the ICA for fuel tank system electrical wiring required by SFAR 88 will be determined in accordance with guidance provided by Policy Statement ANM100–2004–1129, ''Process for Developing Instructions for Maintenance and Inspection of Fuel Tank Systems Required by SFAR 88'' (a copy of which may be found in the docket), or other acceptable process. Compliance with Subpart I will require ICA for the same wire to be determined using an EZAP. While these processes have similarities, they may result in identification of different tasks and intervals. The ICA maintenance tasks and intervals that result from these determinations are expected to be additive. If there is a conflict in the task or interval, for purposes of this section, the FAA Oversight Office will resolve the conflict.

The ICA should be reviewed to ensure that any maintenance tasks for EWIS do not compromise fuel tank system wire requirements, such as separation or configuration specifications. If there is an inspection or maintenance requirement for EWIS and the fuel tank system within the same zone, there must be an effort to align the task interval. In addition, design certificate holder's existing documents containing EWIS and fuel tank system ICA should be reviewed to either remove or cross-reference redundant information.

The compliance plan required by this proposal must include identification of those common locations in the airplane where EWIS and fuel tank ICA apply. The considerations for compatibility and minimization of redundancy for the two systems will be reviewed and approved by the FAA Oversight Office. The plan for documenting the required ICA for EWIS and fuel tank system will also be reviewed as part of the compliance plan. These documents are critical to the effort that will be required of operators to show compliance with the operational rules contained in this proposal. We intend that the ICA information, both in content and format, will be readily usable by the affected operators for developing proposed changes to their maintenance or inspection programs. Generally, the information contained in the ICA for the fuel tank system required by SFAR 88 would include:

- The location of the fuel tank system components to be maintained or inspected and any access requirements.
- Any unique procedures required, such as special, detailed inspections or dual sign-off of maintenance records.
- Specific task information, such as inspections defined by pictures or schematics.
- Intervals for any repetitive tasks.
- Methods, techniques, and practices required to perform the task.
- Criteria for passing inspections.
- Any special equipment or test apparatus required.
- Critical Design Configuration Control Limitations—for example, wire separation or pump impeller material specifications—that cannot be altered, except in accordance with the applicable limitation.

The information for EWIS ICA would generally include:

- Identification of each zone of the airplane.
- Identification of each zone that contains EWIS.
- Identification of each zone containing EWIS that also contains combustible material.
- Identification of each zone in which EWIS is in close proximity to both primary and back-up hydraulic, mechanical, or electrical flight controls and lines.
- The location of the EWIS components to be maintained or inspected and any access requirements.
- Any unique procedures required, such as special, detailed inspections, or a dual sign-off of maintenance records.
- Specific task information, such as inspections defined by pictures or schematics.
- Intervals for any repetitive tasks.
- Methods, techniques and practices required to perform the task.
- Criteria for passing inspections.
- Any special equipment or test apparatus required.
- Instructions for protection and caution information that will minimize contamination and accidental damage to EWIS during performance of maintenance, alterations, or repairs.
- Guidelines for identifying wiring discrepancies and assessing what effect such discrepancies, if found, could have on adjacent systems, particularly if these include wiring.
- Critical Design Configuration Control Limitations—for example, wire separation specifications—that cannot be altered, except in accordance with the applicable limitation.

Policy Statement No. PS–ANM100–2004–10029 provides guidance on acceptable processes for developing fuel tank system ICA as required by SFAR 88. The FAA expects that engineers from aircraft certification offices or from the Transport Airplane Directorate will review and approve the results of the EZAP.

The three groups whose compliance with this proposal would be required,

and their required compliance dates, indicated in paragraph (c), are as follows:

- Existing TC holders: No later than December 16, 2007.
- Current applicants for TCs and amendments to TCs (including service bulletins describing design changes) whose applications are pending and future applicants for TC amendments: No later than December 16, 2007, or the date of approval of their application, whichever is later.
- Pending and future applicants for STCs: No later than June 16, 2008, or the date of the approval of their application, whichever is later.

Future applicants for changes to TCs that comply with proposed § 25.1739 would not be required to comply with this section. As discussed previously, under § 21.101, applicants for ''significant'' changes that meet certain criteria must comply with the latest airworthiness requirements. If this NPRM is adopted as a final rule, such a future applicant would have to comply with § 25.1739. Because the proposed requirements of that section are more extensive than the proposed requirements of § 25.1805, requiring compliance with this section would be redundant.

In determining the compliance schedules for the requirements covered in this proposal, the FAA balanced the safety-related reasons for the rule against the need to give industry enough time to comply with it. Therefore, before setting the proposed compliance times for the TC holders to complete their analysis of their representative type design, the FAA considered the following:

- Input from industry.
- Current or planned compliance periods of several aging-related rulemakings, such as the pending Aging Airplane Safety proposed rule, Fuel Tank System safety initiatives (69 FR 45936, 66 FR 23086), and the pending Widespread Fatigue Damage proposal.
- Safety improvements that will result from compliance with this rule.
- Industry's current efforts to incorporate some of these safety initiatives.

ATSRAC recommended a compliance time of 24 months for TC holders to develop these ICA. To align this proposal with other rules in the aging airplane program, the FAA has adjusted the time frame to that of other rules discussed earlier, so that operators can more efficiently comply with requirements to revise their maintenance programs. To support this realignment, compliance dates that allow an 18-month time frame for TC holders to develop the EWIS ICA and 12 months for operators to implement them were determined to be appropriate and were included in this proposal. We believe these time frames are supported by the experience gained from the EZAPs already performed. Since ATSRAC made its recommendation, several manufacturers have applied an EZAP to their type design airplanes and have completed those reviews.

When we initially drafted this proposal, we assumed the final rule would be adopted by mid-2006. As a result, we set the compliance dates in the proposal using the mid-2006 time frame as the baseline. However, the proposed rulemaking process took longer than we had anticipated. Consequently, we expect that the time frame for adoption of the final rule will be sometime after mid-2006. We recognize that this delay will adversely impact the compliance dates we propose for TC holders and operators and we may need to adjust them. Therefore, we request and will consider your comments on revising the proposed compliance dates. Once the ICA are approved by the FAA Oversight Office, the submitter must make the ICA available to affected persons as required by § 21.50.

Because this proposal sets a precedent in introducing part 25 requirements for holders of existing TCs, it is the FAA's expectation that they will work closely with the FAA Oversight Office in putting together a compliance plan for developing the required ICA. Proposed section 25.1805(d) would require that the compliance plan be approved by the FAA Oversight Office as sufficient basis for showing compliance with the proposed § 25.1805.

The following table lists the FAA Oversight Offices, as currently determined by the Administrator, that oversee issuance of type certificates and amended type certificates for manufacturers of transport category airplanes with a passenger capacity of 30 passengers or a payload capacity of 7500 pounds or greater.

Airplane manufacturer	FAA Oversight Office
Aerospatiale	Transport Airplane Directorate, International Branch, ANM–116.
Airbus	Transport Airplane Directorate, International Branch, ANM–116.
BAE	Transport Airplane Directorate, International Branch, ANM–116.
Boeing	Seattle Aircraft Certification Office.
Bombardier	New York Aircraft Certification Office.
CASA	Transport Airplane Directorate, International Branch, ANM–116.
deHavilland	New York Aircraft Certification Office.
Dornier	Transport Airplane Directorate, International Branch, ANM–116.
Embraer	Transport Airplane Directorate, International Branch, ANM–116.
Fokker	Transport Airplane Directorate, International Branch, ANM–116.
Lockheed	Atlanta Aircraft Certification Office.
McDonnell-Douglas	Los Angeles Certification Office.
SAAB	Transport Airplane Directorate, International Branch, ANM–116.

Development of a compliance plan is necessary to ensure that TC holders thoroughly understand the requirements of this proposal and produce on time appropriate ICA that are acceptable in content and format in addressing the maintenance and inspection tasks for EWIS and the fuel tank system. Integral to the compliance plan will be the inclusion of procedures to allow the FAA to monitor progress towards compliance. These aspects of the plan will help ensure that the expected outcomes will be acceptable and on time for incorporation by the affected operators in accordance with the operational rules contained in this proposal.

To help ensure that TC holders are fully informed of what is necessary to show compliance with these requirements, as previously discussed, we are issuing AC 120.XX, and have issued a policy statement that describes an acceptable means, but not the only means, of complying with these requirements for developing EWIS ICA and the fuel tank system ICA required by SFAR 88. AC 120-XX, ''Program to Enhance Transport Category Airplane

Electrical Wiring Interconnection System Maintenance,'' provides an enhanced zonal analysis procedure (EZAP) for completing a review of the representative airplane covering all areas, including the flight deck (or cockpit), electrical power center, fuel tank wiring, and powerfeeder cables. Policy Statement ANM100–2004–10029, ''Process for Developing Instructions for Maintenance and Inspection of Fuel Tank Systems Required by SFAR 88,'' provides guidance for identifying ICA, including any airworthiness limitations, as a result of the fuel tank system review required by SFAR 88 and compliance with Amendment 102 to part 25 Appendix H and § 25.981.

Proposed § 25.1805(d) is intended to provide TC holders, applicants with pending TC-amendment or STC applications, and the FAA with assurance that they understand what means of compliance are acceptable and have taken necessary actions, including assigning sufficient resources, to achieve compliance with this section. This paragraph is based substantially on ''The FAA and Industry Guide to Product Certification,'' which describes a process for developing project-specific certification plans for type certification programs. A copy of this guide may be found in the docket. This planning requirement would not apply to future applicants for TC amendments or STCs because, as described in the guide, this type of planning routinely occurs at the beginning of the certification process.

The guide recognizes the importance of ongoing communication and cooperation between applicants and the FAA. Section 25.1805, while regulatory in nature, is intended to encourage establishment of the same type of relationship in the process of complying with this section. In particular, in addition to other necessary information, paragraph (d)(3) makes it clear that, to the extent that they intend to use means of compliance different from those already identified as acceptable by the FAA, it is imperative that they identify those differences at the earliest possible stage so any compliance issues can be resolved without risk of unnecessary expenditure of resources or, ultimately, noncompliance.

Proposed § 25.1805(d) would require TC holders and applicants to submit to the FAA Oversight Office the following within 90 days after the effective date of the rule:

- A proposed project schedule, identifying all major milestones, for meeting the compliance dates of this rule.
- A proposed means of compliance with this section, identifying all required deliverables, including all compliance items and all data to be developed to substantiate compliance. If any affected person has already initiated compliance, the FAA Oversight Office will review the results of those efforts to ensure that the results are acceptable.
- A detailed explanation of how the proposed means will be shown to comply with this section if the affected person proposes a means of compliance that differs from that described in FAA advisory material.
- A proposal for how the approved ICA will be made available to affected persons.

It should be noted that this section applies not only to domestic TC holders and applicants, but also to foreign TC holders and applicants. In this sense, this section is different from most type certification programs, where foreign applicants typically work with their responsible certification authority, and the FAA relies on that authority's findings of compliance under bilateral airworthiness agreements. Since this rulemaking is not harmonized in all cases, the FAA will make all the necessary compliance determinations, and where appropriate we may accept findings of compliance made by the appropriate foreign authorities using procedures developed under the bilateral agreements. The compliance planning provisions of this section are equally important for domestic and foreign TC holders and applicants, and we will work with the foreign authorities to ensure that their TC holders and applicants perform the planning necessary to comply with the requirements of this section.

One of the items required in the plan is, ''If the proposed means of compliance differs from that described in FAA advisory material, a detailed explanation of how the proposed means will comply with this section.'' FAA advisory material is never mandatory because it describes one means, but not the only means of compliance. In the area of type certification, applicants frequently propose acceptable alternatives to the means described in advisory circulars. But when an applicant chooses to comply by an alternative means, it is important to identify this as early as possible in the certification process to provide an opportunity to resolve any issues that may arise that could lead to delays in the certification schedule.

The same is true for this requirement. As discussed earlier, TC holder compliance with this section on time is necessary to enable operators to comply with the operational requirements of this NPRM. Therefore, this item in the plan would enable the FAA Oversight Office to identify and resolve any issues that may arise with the TC holder's proposal without jeopardizing the TC holder's ability to comply with this section by the compliance time.

As of the date of this proposal, certain TC holders have voluntarily started to develop the EWIS EZAP that would be required by proposed § 25.1805. An EZAP has been completed on certain transport category airplanes. Although the EZAP used by those TC holders may not be the version outlined in AC120-XX, it is similar. The FAA would expect that after issuance of the final rule, these TC holders would either submit a plan proposing revisions to the EZAP for those model airplanes to be consistent with the guidance given in AC120-XX, or use the planning process to show that their EZAP complies with this section. The FAA Oversight Office will then review the results of those efforts to ensure that the results are acceptable for compliance with this section.

Section 25.1805(e) requires that TC holders and applicants correct a deficient plan, or deficiencies in implementing the plan, in a manner identified by the FAA Oversight Office. Before the FAA formally notifies a TC holder or applicant of deficiencies, however, we will have communicated with them to try to achieve a complete mutual understanding of the deficiencies and means of correcting them. Therefore, the notification referred to in this paragraph should document the agreed corrections.

Because operators' ability to comply with the applicable operational rules will be dependent on TC holders' and applicants' compliance with § 25.1805, the FAA will carefully monitor their compliance and take appropriate action if they fail to achieve compliance. Failure to comply within the specified time would constitute a violation of the requirements and may subject the violator to certificate action to amend, suspend, or revoke the affected certificate in accordance with 49 U.S.C. § 44709. In accordance with 49 U.S.C. 46301, it may also subject the violator to a civil penalty of not more than $25,000 per day per TC until § 25.1805 is complied with.

C. Other Proposed Changes to Part 25

As explained in the preamble discussion of the proposed subpart H, some existing rules applying to EWIS would need revision in order to support the proposed new subpart. Those rules that would be changed by this proposal are:

- 25.611
- 25.855

- 25.869
- 25.1203
- 25.1301
- 25.1309
- 25.1353
- 25.1357

The changes proposed for them are discussed in the section-by-section discussion for proposed subpart H. In addition, this NPRM includes a number of other changes to part 25 requirements for electrical systems discussed later in the section headed ''Electrical System Harmonization Rules.'' The remaining changes to part 25 are discussed below.

Section 25.1357(f) System Power Removal

ATSRAC has proposed adding a requirement that airplane systems normally requiring power removal have a power switch to accomplish this, instead of relying on using the circuit breaker. The FAA has decided that this requirement belongs in § 25.1357.

It is not the intent of the proposal to require that every electrically powered system in the airplane have a means to remove power from them other than a circuit breaker. ATSRAC used the phrase ''normally requiring power removal'' to distinguish between airplane systems normally turned on and off during normal operations, such as passenger convenience systems, and those systems normally powered at all times, such as the flightdeck multi-function displays or the flight management computer. But if, for example, the flight-management computer did require power cycling regularly, for whatever reason, this system would then be required to have a means to do this other than using the circuit breakers.

For systems requiring this power removal design feature, power should be removed from the system as closely as practical to the source of power instead of simply deactivating the outputs of the systems power supplies.

The ability to quickly remove power from an airplane system not required for the airplane's safe operation is important if an emergency situation demands isolation of a known or unknown source of fire or smoke. One of the first things flightcrews are instructed to do when faced with a fire or smoke emergency is to remove power from the known source or from all unnecessary systems if the source is unknown. This is to stop the fire or smoke from spreading. Currently, part 25 regulations do not require systems to have a separate shutoff feature. But the need for the flightcrew to be able to shut off unnecessary systems was tragically illustrated during the investigation of the fatal accident on September 3, 1998, of a Swissair Model MD–11, discussed earlier in this document.

After that accident, the FAA conducted a special certification review (SCR) on the IFE system installed on the airplane, and published its report (''Federal Aviation Administration Special Certification Review Team Report on: Santa Barbara Aerospace, STC ST00236LA–D, Swissair Model MD–11 Airplane, In-flight Entertainment System,'' June 9, 2000. A copy of this report is contained in the docket). One of the team's findings was that the design of the IFE system did not allow the flightcrew or cabin crew to completely remove electrical power in any other way than by pulling the system's circuit breakers. The FAA decided that this was an unsafe condition, and we issued an airworthiness directive prohibiting operation of MD–11 airplanes with that particular IFE system installed. The FAA expanded its investigation and reviewed previously issued STCs that had approved installation of IFE systems on transport category airplanes. That investigation identified over 20 STC IFE installations that had the same design characteristics as the one on the accident MD–11 airplane (no means to remove power other than by pulling the circuit breaker). We issued ADs to correct those inadequate IFE system designs. As more IFE systems with the same design characteristic are identified, ADs will be issued to correct the identified unsafe condition.

On September 18, 2000, the FAA issued a policy memorandum stating that a newly certified IFE system should have a way for the flightcrew or cabin crew to disconnect it from its source of power other than by using circuit breakers. A copy of this memorandum, titled ''Interim Policy Guidance for Certification of In-Flight Entertainment Systems on Title 14 CFR Part 25 Aircraft (Policy Number 00–111–160),'' is in the docket. Most airplane manufacturers are now equipping IFE systems on their newly delivered airplanes with a power source disconnection means. Subsequent policy covering cabin video surveillance systems also contains the same guidance (Policy Number 01–111–196, ''Interim Summary of Policy and Advisory Material Available for Use in the Certification of Cabin Mounted Video Cameras Systems with Flight Deck Displays on Title 14 CFR Part 25 Aircraft,'' included in the docket). ATSRAC (as recommended by the ATSRAC Wire Systems Harmonization Working Group and the ARAC Electrical Systems Harmonization Working Group) believes that this philosophy should be applied to any airplane system that requires having its power removed or reset during normal operations. The FAA agrees with this recommendation.

The proposed § 25.1357(f) would require that airplane systems needing a capability for having their power removed or reset during normal operations must be designed so that circuit breakers are not the primary means to do that. This is a new regulation whose requirements have not previously existed within part 25 and is a recognition that any airplane system, including an IFE system, that requires regular power removal or resetting needs to have a means to do so.

Appendix H to Part 25—Instructions for Continued Airworthiness

As previously noted, improper maintenance, repair, and modifications often hasten the ''aging'' of EWIS. To properly maintain, repair, and modify airplane EWIS, certain information must be available to the designer, modifier, and installer. This information should be part of the ICA as required by current § 25.1529 and the proposed § 25.1739.

This proposal would amend Appendix H by adding a new section, H25.5, to require TC applicants to develop maintenance information for EWIS as part of the ICA as a requirement for getting a design approval. The proposed rule would also apply to applicants for design change approvals (supplemental TCs and amended TCs).

The proposal would require applicants for TCs to prepare ICA for EWIS that are approved by the FAA Oversight Office, in the form of a document that is easily recognizable as an EWIS ICA. To prepare these instructions, they must use an EZAP such as the one described in AC120-XX, ''Program to Enhance Aircraft Electrical Wiring Interconnection System Maintenance'' to perform a review of their representative airplane covering all areas, including the flightdeck (also known as the cockpit), electrical power center, fuel tank wiring and powerfeeder cables, as well as the engine. Applicants for design change approvals would have to perform a similar review for their proposed design changes.

A zonal analysis procedure is an assessment of the structures and systems within each physical zone of the airplane. It is used to develop an inspection program to assess the general condition and security of attachment of all system components and structures items contained in the zone, using general visual inspections (GVI). An enhanced zonal analysis procedure

(EZAP) is an enhanced version of the zonal analysis procedure. It focuses on EWIS components. An EZAP-generated inspection program might call for the use of stand-alone GVI and detailed inspections (DET). A stand-alone GVI is one that is performed separately from the regularly scheduled GVI (typically more frequently) and is focused on a particular area or component. In this case, the focus would be wiring. So while the zonal analysis procedure would result in a regularly scheduled GVI for the entire zone, in which each of its systems and structures are inspected at the same time, the EZAP could result in additional GVIs or DETs for the EWIS in that zone, which occur more frequently. These inspection techniques are discussed later in this section.

An EZAP identifies the physical and environmental conditions contained in each zone of an airplane, analyzes their effects on electrical wiring, and assesses the possibilities for smoke and fire. From such an analysis, maintenance tasks can be developed to prevent ignition sources and to minimize the possibilities for combustion by minimizing the accumulation of combustible materials. Such a procedure would involve dividing the airplane into physical areas, or zones, including actual physical boundaries such as wing spars, bulkheads, and cabin floor, and access provisions for the zone, and identifying which of those zones contain EWIS components. For those zones with EWIS components, characteristics and components of all systems installed in the zone would be listed. The EWIS in the zone would be described, including information on the full range of power levels carried in the zone. And the presence or possibilities for ignition sources or accumulation of combustibles would be noted.

Combustibles are any materials that could cause a fire to be sustained in the event of an ignition source. Examples of combustible materials would be dust or lint accumulation, contaminated insulation blankets, and fuel or other combustible liquids or vapors. Wire contaminants are foreign materials that are likely to cause degradation of wiring. Wire contaminants can also be combustibles. Some commonly used airplane liquids, like engine oils, hydraulic fluids, and corrosion prevention compounds, might be readily combustible, but only in vapor or mist form. In that case, an assessment must be made of conditions that could exist within the zone that would convert the liquid to that form. Combustibles appearing as a result of any single failure must be considered. An example would be leaks from connection sites of unshrouded pipes. For the purposes of this new requirement, the term combustible does not refer to material that will burn when subjected to a continuous source of heat as occurs when a fire develops. Combustibles, as used here, will sustain a fire without a continuous ignition source.

An EZAP must address:

- Ventilation conditions in the zone and the density of the installations that would affect the presence and build-up of combustibles and the possibilities for combustion. Avionics and instruments located in the flightdeck and equipment bays, which generate heat and have relatively tightly packed installations, require cooling air flow. The air blown into the area for that cooling tends to deposit dust and lint on the equipment and EWIS components.
- Liquid contamination on wiring. Most synthetic oils and hydraulic fluids, while they might not be combustibles by themselves, could be an aggravating factor for accumulation of dust or lint. This accumulation could then present fuel for fire. Moisture on wiring may increase the probability of arcing from small breaches in the insulation, which could cause a fire. Moisture on wires that contain insulation breaches can also lead to ''arc tracking.'' As discussed previously, arc tracking is a phenomenon in which an electrical arc forms a conductive carbon path across an insulating surface. The carbon path then provides a short circuit path through which current can flow. Short circuit current flow from arc tracking can lead to loss of multiple airplane systems, structural damage, and fire.
- EWIS in close proximity to both primary and back-up hydraulic, mechanical, or electrical flight controls.
- The type of wiring discrepancies that must be addressed if they are identified by general visual or detailed inspections. A listing of typical wiring discrepancies that should be detectable during EZAP-derived EWIS inspections is given in AC120-XXX, Section B ''Guidance for Zonal Inspections.''
- Proper cleaning methods for EWIS components.

Once information about such contaminants and combustibles within an airplane zone is collected, each identified possibility for combustion would then be addressed to determine whether a specific task could be performed to reduce that possibility. An example of a specific task to reduce build-up of combustibles on EWIS components is the use of temporary protective covers (such as plastic sheeting) over EWIS components in a zone where corrosion prevention fluids are being used. This would minimize the amount of fluid contamination of the EWIS components. Preventing fluid contamination reduces the probability of other contaminants, like dust and dirt, accumulating on the EWIS components. If no task can be developed to prevent accumulation of combustibles in a zone, such as the dust blown through the air by cooler fans, then tasks must be developed to minimize their buildup, such as scheduled cleaning.

Developing an ICA to define such tasks would include assessing whether particular methods of cleaning would actually damage the EWIS components. Although regular cleaning to prevent potential combustible build-up would be the most obvious task for an EWIS ICA, other procedures might also be called for. A detailed inspection of a hydraulic pipe might be appropriate, for instance, if high-pressure mist from a pinhole caused by corrosion could accumulate on a wire bundle in a low ventilation area, creating a possibility for electrical arcing.

Proximity of EWIS to both primary and back-up hydraulic, mechanical, or electrical flight controls within a zone would affect the criticality of inspections needed, their level of detail, and their frequency. Even in the absence of combustible material, wire arcing could adversely affect continued safe flight and landing if hydraulic pipes, mechanical cables, or wiring for fly-by-wire controls are routed close to other wiring.

The EZAP-generated ICA must be produced in the form of a single document, easily recognizable as EWIS ICA for that specific airplane model. The single document is relevant to the maintenance and inspection aspects of the ICA, and not the standard wiring practices manual or electrical load analysis, etc.

The ICA must define applicable and effective tasks, and the intervals for performing them, to:

- Minimize accumulation of combustible materials.
- Detect wire contaminants.
- Detect wiring discrepancies that may not otherwise be reliably detected by inspections contained in existing maintenance programs.

As noted earlier, among the types of tasks to be developed from an EZAP are general visual inspections (GVI) and detailed inspections (DET). A GVI is defined as a visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance of the inspected

object unless otherwise specified. It is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. It may be necessary to use a mirror to improve visual access to all exposed surfaces in the inspection area. Stands, ladders, or platforms may be required to gain proximity to the area being checked. It is expected that the area to be inspected is clean enough to minimize the possibility that accumulated dirt, grease, or other contaminants might hide unsatisfactory conditions that would otherwise be obvious. It is also expected, as an outcome of the EZAP applied to EWIS, that any cleaning considered necessary would be performed in accordance with procedures that minimize the possibility of the cleaning process itself introducing anomalies. The EZAP must identify guidelines to assist personnel performing a GVI in identifying wiring discrepancies and in assessing what effect such discrepancies, if found, could have on adjacent systems, particularly if these include wiring. As discussed previously, a list of typical wiring discrepancies that should be addressed is contained in proposed AC120–XX, Section B, ''Guidance for Zonal Inspections.''

A DET is an intensive examination of a specific item, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at an intensity considered appropriate. Inspection aids, such as mirrors, magnifying lenses, or other means, may be necessary. Surface cleaning and elaborate access procedures may be required. A DET can be more than just a visual inspection. It may include tactile assessment to check a component or assembly for tightness and security. Such an inspection may be needed to ensure the continued integrity of installations such as bonding jumpers, terminal connectors, etc.

A DET would be required when the developer of the EZAP determines that a GVI is inadequate to reliably detect anomalies or degradation of EWIS components. Any detected discrepancies must be corrected according to the operator's approved maintenance procedures. It is not intended that the EZAP ICA identify how to correct detected discrepancies.

To prevent improper modification and repair of existing EWIS or the improper installation of a new EWIS, modification designers and modification personnel must know the applicable standard wiring practices, EWIS identification requirements, and electrical load data for the airplane undergoing modification. The proposed Appendix H 25.5 would also require that the following information be included in ICA applicable to EWIS:

- Standard wiring practices data.
- Wire separation design guidelines.
- Information to explain the airplane's EWIS identification method required by the proposed § 25.1711.
- Electrical load data and instructions for updating that data. Such information will help ensure that those modifying, repairing, or installing new EWIS will not perform any action that will adversely affect previously certified systems and unintentionally introduce potential hazards.

Standard wiring practices are defined as standards developed by the specific airplane manufacturer or industry-wide standards for the repair and maintenance of EWIS. They include procedures and practices for the installation, repair, and removal of EWIS components, including information about wire splices, methods of bundle attachment, connectors and electrical terminal connections, bonding, and grounding. Although a standard wiring practices manual is not a design manual, and those designing a new EWIS modification for a specific model airplane should not use it as such, it does provide the designer with insight into the types of EWIS components used by the TC holder and the procedures recommended by the manufacturer for maintenance or repair that supports continued airworthiness of the components.

EWIS separation guidelines are important for maintaining the safe operation of the airplane. Maintenance and repair personnel need to be aware of the type certificate holders' separation requirements so they do not compromise separation in previously certified systems. In fuel tank systems, the separation of certain wires may be critical design configuration control items and therefore qualify as an airworthiness limitation. Maintenance personnel need to be aware of these guidelines and limitations because many times wire bundles must be moved or removed to perform necessary maintenance. They must be able to readily identify EWIS associated with systems essential to the safe operation of the airplane.

Similarly, those who design and install new EWIS need to be aware of separation requirements so they can use the same methods to develop the required separation for the EWIS they are adding to the airplane. This would help to ensure both that newly added EWIS is adequately separated from other EWIS, airplane system components, and structure so they do not damage the added EWIS, and that the addition of the new EWIS does not invalidate separation for previously certified EWIS.

Electrical load data and the instructions for updating that data are necessary to help ensure that future modifications or additions of equipment that consume electrical power do not exceed the generating capacity of the onboard electrical generation and distribution system. The existing § 25.1351(a)(1) mandates that the required generating capacity, and the number and kinds of power sources, must be determined by an electrical load analysis. Typically, after an airplane is delivered and enters service, it is modified numerous times throughout its service life. Each addition or deletion of an electrical-power-consuming system changes the electrical load requirements. The only way to ensure that the capacity of the overall generating and distribution system, as well as individual electrical buses, is not exceeded is to have an up-to-date electrical load analysis. The best way to ensure that an up-to-date electrical load analysis is maintained is for the type certificate holder to include such data in the ICA provided with the airplane when it is first delivered to a customer, along with recommended practices for keeping it updated as electrical loads are deleted and added.

D. Part 25 Electrical System Harmonization Rules

At the time the EWIS certification requirements contained in this proposal were being developed, several existing part 25 certification requirements were also undergoing revision under a separate joint harmonization effort with the European JAA. The FAA had tasked ARAC to develop recommendations for harmonized rules (64 FR 66522). The intent of that harmonization effort was to develop a common set of standards between 14 CFR part 25 and JAR–25. As mentioned previously, JAR–25 is the European counterpart to part 25.

When ATSRAC began developing the EWIS requirements proposed in this NPRM, the process of developing harmonized proposals was essentially complete, although NPRMs had not yet been published in the **Federal Register**. So ATSRAC worked on the assumption that the harmonized rules would be in effect by the time this proposal was published, and used the new proposed harmonized part 25 as the baseline for the proposed EWIS requirements. This NPRM revises several of the harmonized

rules to accommodate the proposed new EWIS requirements.

Three of those harmonized part 25 proposals, § 25.869(a), § 25.1353(a), (c)(5), (c)(6), (d), and § 25.1431(d), have already been adopted as final rules (69 FR 12526). We're revising the new 25.1353(a) in this NPRM. Some of the remaining harmonized rules have been published as NPRMs. But several others have not. Therefore, to ensure consistency in the proposed EWIS requirements, those harmonized requirements on which ATSRAC recommendations are based, and which have not yet been published as final rules, are included in this NPRM. These are: §§ 25.899, 25.1309, 25.1310, 25.1357, 25.1360, 25.1362, and 25.1365.

The following discusses the proposed harmonization rules that must be adopted to support the addition of the proposed part 25 EWIS certification requirements. We believe the public should be aware of the background and full reasoning behind each change to these standards.

Section 25.899 Electrical Bonding and Protection Against Static Electricity

Proposed § 25.899 would contain requirements for electrical bonding and protection against static electricity. Current §§ 25.581, 25.954, and 25.1316 contain requirements for protecting the airplane and its systems from the effects of lightning strikes. But the current requirements do not address the hazards that could occur because of the accumulation of electrostatic charge. Static electricity can cause electrical shock hazards to people, ignite fuel vapors, and cause electromagnetic interference of airplane systems. Proposed § 25.899 would require that electrical bonding and protection against static electricity be designed to minimize accumulation of electrostatic charge that could cause human injury from electric shock, ignition of flammable vapors, or interference with electrical and electronic equipment. Compliance could be shown by bonding the components properly to the airframe or by incorporating other acceptable means to dissipate static charge.

This proposal would adopt a modified version of the current proposed JAR 25X899. As currently written, the JAR duplicates some of the lightning protection requirements of JARs 25.581, 25.985, and 25.1316. That proposed JAR 25X899 will be revised as well, and those duplications removed, for the purposes of this harmonization.

There is currently no § 25.899. This new requirement is necessary to ensure electrical bonding and static protection is fully addressed as a design standard. Proposed § 25.899 maintains the same level of safety as currently exists because it reflects and codifies current industry practices. The proposed change would affect airplane manufacturers by requiring compliance with the new sections of the regulations. However, this would have a minimal effect in practice because airframe manufacturers must comply with proposed standards when seeking joint FAA–JAA certification of their products, so there would be little change required from the standards they have been using to comply with the existing proposed JAR 25X899.

The FAA has developed advisory material about the requirements for bonding and static electricity protection in transport category airplanes. This material is contained in proposed AC 25.899–1.

Section 25.1309 Equipment, Systems, and Installations and Section 25.1310 Power Source Capacity and Distribution.

Proposed new § 25.1310 is composed of material now covered in § 25.1309(e) and (f). The current standards define an ''essential load'' on the power supply and the conditions under which those loads must be supplied. An ''essential load'' is each equipment installation whose function is required for type certification or by operating rules and that requires a power supply. These paragraphs require that power sources must be able to supply those loads under a number of specified failure conditions. These requirements are not directly related to the safety and analysis requirements of § 25.1309. For that reason, and to make them more accessible, we propose to move them to a new section where they would stand alone. There is no current § 25.1310.

The goal of harmonization was to ''envelope'' to the more stringent requirements, which in this case are those contained in the current § 25.1309(e) and (f). The proposal is to adopt as § 25.1310 the more stringent current § 25.1309(e) and (f). The JAA has agreed to adopt the same requirements in a new JAR 25.1310 (JAR NPA25df-317). Current § 25.1309(g) would be redesignated as § 25.1309(e). The proposed new § 25.1310 and JAR 25.1310 would not be completely harmonized because JAR 25.1310 contains requirements for maintenance of airworthiness essential services after failure of any two engines on a three-engined airplane and makes reference to two JAR Advisory Circular Joint materials (ACJ). But the proposed standard maintains the same level of safety as the current regulations. It is in line with current design practices and will have a minimum effect on the airplane operators and manufacturers.

There is no current published FAA advisory material for the proposed rule. ARAC has recommended that the JAR ACJ to 25.1310(a) be adopted as FAA advisory material because it provides a useful, acceptable means of compliance. The FAA plans to adopt it.

Section 25.1357 Circuit Protective Devices

Section 25.1357 specifies standards for use, functional requirements, and installation requirements for electrical circuit protective devices. These standards protect the airplane's wiring from electrical faults or malfunctions.

JAR paragraph 25.1357(d) contains a requirement to provide sufficient spare fuses, formerly located in paragraph (f). The reason the JAA moved this text from paragraph (f) to (d) was to make it clear that the spare fuse requirement does not apply to fuses that are inaccessible in flight. We propose to revise § 25.1357 to move the spare fuse requirement of paragraph (f) to paragraph (d) to harmonize with the JAR requirement.

The proposed standard continues to address the underlying safety issue by providing protection for the airplane's electrical system from wiring faults or malfunctions, and by ensuring that there is no confusion about use of spare fuses in flight. It would maintain the same level of safety relative to the current regulations and is in line with current industry practice.

Manufacturers and operators of transport category airplanes could be affected by the proposed change. But since it is in line with current industry practice and does not result in any practical changes in requirements or practice, such effects would not be significant.

The JAR paragraph 25.1357(a) references advisory material, ACJ 25.1357(a), which states that the effects of variations in ambient temperatures on either the protective device or the equipment it protects must not result in hazards. We intend to revise our current AC 25–1357 to include this ACJ material. The announcement of a new AC on the effects of temperature variations will be published in the **Federal Register** once it is available to the public. Comments on the proposed AC will be invited in that notice.

Section 25.1360 Precautions Against Injury

Also to harmonize with the standards of JAR, the FAA proposes to add a new section, § 25.1360, concerning electric

shock and burn protection. Currently, there is no part 25 requirement for precautions against injury from electrical shock and burns. Adding the JAR requirement to part 25 would increase safety. The proposed JAR 25X1360, with its related ACJ material, would require that the electrical system and equipment must be designed to minimize risk of electrical shock and burns to the crew, passengers, and maintenance and servicing personnel during normal operations. The ACJ provides advisory material for high voltages and high temperatures and a means of compliance to the requirements.

The proposed action is to harmonize the regulations by the adoption of JAR 25X1360 and its ACJ material in its entirety. The proposed standard is more stringent for part 25 because it adds a new requirement and new advisory material. But it is in line with current industry practice, and therefore would maintain the level of safety.

The FAA intends to publish advisory material that adopts the existing JAA advisory material.

Section 25.1362 Electrical Supplies for Emergency Conditions.

The FAA proposes to add a new section, § 25.1362, about electrical supplies for emergency conditions. There is no part 25 standard addressing electrical supplies for emergency conditions equivalent to JAR 25.1362. Partial coverage is provided by §§ 25.1189, 25.1195, 25.1309, and 25.1585.

The JAR 25.1362 and associated ACJ material were created to ensure that electrical supplies for emergency functions (such as fuel and hydraulic shut-off valves) are maintained so they are operable after the flight crew has switched off the main power sources. This is necessary so emergency procedures can be performed. Since there is no equivalent standard to JAR 25.1362 in part 25, but partial coverage is provided by §§ 25.1189, 25.1195, 25.1309, and 25.1585, application of JAA standards by U.S. manufacturers and aircraft operators has sometimes resulted in different designs for the powering of appropriate emergency functions.

The proposed action would adopt a new § 25.1362 harmonized to a revised JAR 25.1362. The new harmonized standard would provide for a consistent application of the standards. The ACJ would be revised and adopted as a new AC by the FAA. This proposed rule and advisory material would provide flexibility by allowing either an appropriate airplane flight manual (AFM) procedure or design implementation to achieve compliance with the standards.

This proposal addresses the underlying safety issue by ensuring that appropriate electrical power supplies are maintained to emergency services after the main power sources have been switched off by the flightcrew. The proposal increases the level of safety by focusing on appropriate methods to ensure that electrical power is provided for emergency functions during emergency landing or ditching conditions. It is in line with current industry practice. Another option considered was to adopt the existing JAR and ACJ into 14 CFR. But revising the JAR and the ACJ material and creating a new § 25.1362 and AC 25–1362 results in a harmonized standard that would provide greater flexibility for compliance.

Since this proposed change is in line with current design practices, the effect is considered to be minimal for aircraft operators and manufacturers affected by this change.

There is no FAA advisory material available. This proposal would create a new AC 25–1362 harmonized with ACJ 25X1362.

Section 25.1365 Electrical Appliances, Motors, and Transformers

The FAA proposes to add a new section, § 25.1365, within the ''Miscellaneous Equipment'' section of subpart F, concerning design and installation of domestic appliances. The term ''domestic appliance'' is used to refer to those items placed on the airplane to provide service amenities to passengers. Examples of domestic appliances are cooktops, ovens, microwave ovens, coffee makers, water heaters, refrigerators, and toilet flush systems. In turn, domestic systems are those such as lavatories or galleys, that may contain one or more domestic appliances. IFE equipment, however, is not considered equipment that falls under the definition of a domestic appliance. Proposed § 25.1365 is now covered by § 25.1309(b), which does not specifically address electrical appliance motors and transformers.

The proposed § 25.1365 would require that domestic appliances be designed and installed so that in the event of failures, the requirements of §§ 25.1309(b), (c), and (d) would be satisfied. It would further require that galleys and cooking appliances be such as to minimize risk of overheating or fire and that they be installed to prevent damage or contamination of other equipment from fluids or vapors resulting from spillage during use of the appliances. It would also require that electric motors and transformers be provided with a thermal protection device unless it can be shown that the circuit protective device required by § 25.1357(a) would be sufficient to show compliance with the requirements of § 25.1309(b).

Adoption of the proposal would address concerns that faulty galley heating equipment (ovens) often cause smoke or fire in the cabin, and that circuit protection devices used in motor power supplies for those appliances have not always provided enough protection against failures.

The proposed standard would be an improvement over current safety practices because current part 25 does not specifically address electrical appliance motors and transformers. The FAA considers that a new § 25.1365 specifically addressing domestic appliances is the most appropriate way to increase the level of safety. The JAA is adopting the same requirement as JAR 25.1365.

Aircraft operators and manufacturers, together with suppliers of galley and electrical equipment, could be affected by this change. Since newly certificated aircraft may have to be supplied with newly designed galley equipment, airplane operators may elect to introduce the same new equipment into their existing fleet to maintain fleet commonality.

A new AC 25–1365 will be developed and an announcement of its availability for comment will be published in the **Federal Register**.

E. Proposed Changes to Part 91, 121, 125, and 129 Operating Rules for Fuel Tank Systems and EWIS and Other Existing Continued-Airworthiness-Related Rules

As discussed earlier, the proposed alignment of the ICA requirements for EWIS and the fuel tank system is a result of an FAA review and realignment of the Aging Airplane Program. We have determined that certain compliance dates in the existing rules and pending proposals could be better aligned. Other changes to the rules and proposals are necessary to increase the cost-effectiveness of these rules and proposals. Therefore, we have decided to revise those requirements and proposals and to align the compliance schedules as nearly as possible. This effort also includes a proposal to create new subparts in parts 25 (subpart I, discussed earlier), 91, 121, 125, and 129. These new subparts would contain certain rules in this proposal and other existing and future rules that pertain to the support of

continued airworthiness, in particular, rules addressing aging airplane issues. The FAA believes that inclusion of certain rules under the new subparts will improve the reader's ability to readily identify rules pertinent to continued airworthiness.

The table below illustrates what proposed and existing requirements will be included in these new subparts. Each of these new subparts is titled ''Continued Airworthiness.'' The proposed new subparts consist of relocated, revised, and new regulations pertaining to continued airworthiness of the airplane. Unless we say otherwise, our purpose in moving requirements to these new subparts is to ensure easy visibility of those requirements applicable to the continued airworthiness of the airplane. We do not intend to change their legal effect in any other way.

NEW CONTINUED AIRWORTHINESS SUBPARTS FOR PARTS 25, 91, 121, 125, AND 129

Part 25 new/relocated rules within proposed Subpart I	Part 91 new/relocated rules within proposed Subpart L	Part 121 new/relocated rules within proposed Subpart Y	Part 125 new/relocated rules within proposed Subpart M	Part 129 new/relocated rules within proposed Subpart B
§ 25.1801—Purpose and definition (new).	§ 91.1501—Purpose and definition (new).	§ 121.901—Purpose and definition (new).	§ 125.501—Purpose and definition (new).	(Proposed Subpart A would contain a revised § 129.1 and all of existing part 129 except §§ 129.16, 129.32, and 129.33).
§ 25.1803—Reserved	§ 91.1503—Reserved	§ 121.903—Reserved	§ 125.503—Reserved	§ 129.101—Purpose and definition (new).
§ 25.1805—Electrical wiring interconnection systems (EWIS) maintenance program (new).	§ 91.1505—Repairs assessment for pressurized fuselages (formerly § 91.410(a)).	§ 121.905—Aging airplane inspections and records reviews (formerly § 121.368).	§ 125.505—Repairs assessment for pressurized fuselages (formerly § 125.248(a)).	§ 129.103—Reserved.
	§ 91.1507—Fuel tank system maintenance program (new) (replaces requirements of § 91.410(b)).	§ 121.907—Repairs assessment for pressurized fuselages (formerly § 121.370(a)).	§ 125.507—Fuel tank system inspection program (new) (replaces requirements of § 125.248(b)).	§ 129.105—Aging airplane inspections and records reviews for U.S.-registered multiengine aircraft (formerly § 129.33).
		§ 121.909—Supplemental inspections (formerly § 121.370a).	.....	§ 129.107—Repairs assessment for pressurized fuselages (formerly § 129.32(a)).
		§ 121.911—Electrical wiring interconnection systems (EWIS) maintenance program (new).	.....	§ 129.109—Supplemental inspections for U.S.-registered aircraft (formerly § 129.16).
		§ 121.913—Fuel tank system maintenance program (new) (replaces requirements of § 121.370(b)).	.....	§ 129.111—Electrical wiring interconnection systems (EWIS) maintenance program (new).
				§ 129.113—Fuel tank system maintenance program (new) (replaces requirements of § 129.32(b)).

As previously stated, other future rules pertaining to the support of continued airworthiness would also be contained in these proposed new subparts. Several such proposals are currently under development. But because of uncertainties in the timing of adoption of final rules, it is not always possible to estimate which of the proposals currently being developed will reach final rule stage first. In order to ensure that the proposed new subparts for continued airworthiness have been established in 14 CFR to contain whichever of several new continuing airworthiness proposals is adopted, the FAA has decided to use a ''building block'' strategy to establish the new subparts.

Until the new subparts have been established in 14 CFR as part of a final rule, each of several proposals containing new continued airworthiness rules will include language needed to set up the proposed subparts. Once one of those proposals becomes final, and the new continued airworthiness subparts are thus established, then other continued-airworthiness-related proposals will delete any language relating to setting up the new subparts. They will retain only the rule language pertinent to that specific proposal.

A result of this ''building block'' strategy of proposed rulemaking is the possibility that two or more NPRMs may appear in the **Federal Register** proposing the same new continued airworthiness subparts for 14 CFR at the same time. The language setting up the operational rule subparts will be the same in each rulemaking. But the language setting up subpart I of part 25 will vary slightly because of differences in the applicability of each rule. The proposed applicability in proposed §§ 25.1 and 25.1801 will be correct for each NPRM. Otherwise, commenters addressing each NPRM might be confused by an inconsistency between the applicability of the subpart and the applicability of the individual proposed rule sections. And until final decisions are made on the content of each later NPRM, it would be inappropriate and potentially misleading for this NPRM to propose that content.

If this NPRM, which has the narrowest applicability of several

proposals in development, is adopted first, then as each of the other final rules is adopted, §§ 25.1 and 25.1801 would be amended to expand the applicability to cover what's added in the new rule. For instance, one proposal might cover holders of existing supplemental type certificates (STCs), so § 25.1 and § 25.1801, as adopted in this NPRM, would be amended to reference those holders. If a proposal applying to them is adopted first, then when this proposal is adopted, we can remove the proposed § 25.1 and § 25.1801 from the final rule, because those provisions would already be included in the previously adopted rule.

When all the proposals currently under development are issued as final rules, § 25.1 and § 25.1801 will be as broad as they need to be to cover all of the rules. If any of those rules currently under development is not issued, then those sections would be only as broad as is needed for the rules that are adopted. Because the language in each NPRM will have been appropriate for that specific NPRM, the public will have been given adequate notice for all of the provisions in the final versions of those sections.

Paragraph (a) of the ''Purpose and definition'' sections of part 91, subpart L, part 121, subpart Y, part 125, subpart M, and part 129, subpart B generally describes the applicability of these subparts and states that the purpose of the various sections in these subparts is to prescribe requirements to support continued airworthiness. While most of the requirements of these subparts would address the need for improved maintenance, these subparts may also include requirements to modify airplanes or take other actions that we consider necessary for continued airworthiness.

Historically, the only means used by the FAA to impose these types of requirements was the AD process. Under part 39, ADs address unsafe conditions that we determine are likely to exist or develop on other products of the same type design. In recent years, the FAA has identified a number of fleet-wide continued airworthiness issues, particularly relating to aging airplanes, that are not limited to particular type designs. Under these circumstances, general rulemaking may be a more efficient and appropriate way to address these types of problems than ADs. These new subparts provide locations for these types of requirements.

Paragraph (b) of these sections provides a definition of the term ''FAA Oversight Office.'' As stated in the discussion of proposed § 25.1801, the FAA Oversight Office is the aircraft certification office or office of the Transport Airplane Directorate with oversight responsibility for the relevant type certificate or supplemental type certificate, as determined by the Administrator. As discussed previously, the primary means for operators to comply with the requirements of these subparts would be by implementing programs or taking other actions developed by the TC and STC holders under proposed subpart I of part 25. In each case, to ensure compliance with the relevant subpart I rule, the TC and STC holder deliverables must be approved by the FAA Oversight Office. Because we expect this will be a standard approach to compliance with the requirements of these subparts, we are including this definition in these sections to avoid having to repeat it in each section within these subparts.

Proposed Changes to Parts 121 (Subpart Y) and 129 (Subpart B)—EWIS Maintenance Programs

Paragraph (a) states that these sections would apply to transport category, turbine powered airplanes with a maximum type certificated passenger capacity of 30 or more, or having a maximum payload capacity of 7500 pounds or more resulting from the original certification of the airplane or later increase in capacity. This applicability provision coincides with that of proposed § 25.1805 and is intended to ensure that, if a TC or STC holder is required to develop EWIS ICA for an airplane design, the operator of that airplane is required to implement them. As discussed previously, certain vintage airplanes would be excluded from these requirements. This applicability would result in the coverage of airplanes where the safety benefits and the public interest are the greatest. This action would affect approximately 7,000 U.S. registered airplanes in parts 121 and 129 operations.

Paragraph (b) of these sections would add requirements for maintenance programs for EWIS for part 121 certificate holders and part 129 foreign air carriers and foreign operators of U.S. registered aircraft. Paragraph (c) would require them to develop a maintenance program for EWIS based on ICA for EWIS prepared by TC or STC holders. As discussed previously, the changes to part 25 would require both holders of existing TCs and future applicants for TCs and design changes to provide affected operators with these ICA.

The compliance date for adopting these maintenance program changes is December 16, 2008. Assuming this proposal is adopted by mid-2006, this proposal would give operators 30 months after the effective date of the final rule to make these changes. Because the proposed compliance date in § 25.1805 for holders of existing TCs is December 16, 2007, operators would have one year after that date to comply with this section.

For pending and future design changes approved after December 16, 2008, operators incorporating such a change would have to revise their maintenance program to incorporate EWIS ICA before returning the airplane to service.

Paragraph (d) would require that operators keep their EWIS maintenance programs current as they modify their airplanes. As discussed earlier, the proposed changes to part 25 would ensure that, for modifications affecting EWIS, the applicant for the design approval will provide necessary revisions to the ICA. This paragraph would ensure that operators installing those modifications on their airplanes would revise their maintenance program to incorporate these ICA revisions.

Paragraph (e) would require that the maintenance program changes required by these sections be approved by the operator's principal inspector. We are in the process of developing guidance for principal inspectors to ensure that their reviews are consistent and focused on the key implementation issues.

Assuming this proposal is adopted by mid-2006, this proposal would give the affected air carriers and operators 30 months after the effective date of the final rule to incorporate those ICA for EWIS into their manuals. Thereafter, inspections and maintenance of EWIS and fuel tank systems must be carried out at the intervals specified in the operator's maintenance program.

Many problems caused by inadequate wire maintenance practices have been discussed previously in this document. Much effort has been devoted to identifying the maintenance practices that could either prevent such incidents and accidents from occurring again or mitigate their causes. The purpose of this new section is to ensure that enhanced EWIS and fuel tank system maintenance techniques are put into practice on a continuing basis in airplane maintenance programs. Proper use of existing methods, techniques, and practices, combined with knowledge gained through ATSRAC activities, service history, research, and analysis, will result in improved wire system safety.

Proposed Changes to Parts 91 (Subpart L), 121 (Subpart Y), 125 (Subpart M), and 129 (Subpart B)—Fuel Tank Maintenance Programs

These proposals would require part 91 and part 125 operators, part 121 certificate holders, and part 129 foreign air carriers and foreign persons operating U.S. registered airplanes to incorporate fuel tank system ICA into their inspection or maintenance programs. As discussed earlier, one of the main objectives of this rulemaking is to align the operational requirements for fuel tank maintenance programs with the proposed requirements for EWIS maintenance programs. To that end, except as discussed below, the current fuel tank requirements would be revised to be parallel with the EWIS operational requirements discussed earlier. We provide the justification for these parallel provisions in the earlier discussion of the EWIS proposal, and it is not repeated here.

Part 91 and part 125 operators are required to have an inspection program. Part 121 air carriers are required to have an inspection program and a program covering maintenance, preventive maintenance, and alterations for their airplanes. As provided by § 43.13(a), operators may choose to follow the maintenance instructions developed by the TC holder or they may develop their own maintenance instructions, as long as they are acceptable to the Administrator. But they must comply with the airworthiness limitations section of the ICA. Foreign persons or foreign air carriers operating a U.S. registered aircraft are required to have a maintenance program approved by the Administrator.

Because of the Fuel Tank Safety Rule, the above-listed operators and air carriers must now incorporate instructions for inspection and maintenance of the fuel tank system into their inspection or maintenance programs. These instructions must address the actual configuration of the fuel tank systems and they must be approved by the FAA aircraft certification office (ACO) having cognizance over the TC for the affected airplane. The compliance time for incorporation of the fuel tank system instructions for inspection and maintenance into the inspection or maintenance programs was changed on July 30, 2004 to December 16, 2008. The reasons for that change were briefly outlined earlier in this document in the discussions about rule alignment. This proposal would change the current requirements for the instructions for fuel tank inspections and maintenance that must be incorporated into operators' and air carriers' inspection or maintenance programs in the following ways:

- The FAA Oversight Office must approve ICA for the fuel tank system, and the operator's principal inspector or Flight Standards District Office (FSDO) must approve the operator's program changes incorporating those ICA.

The current rule requires the ACO to approve individual operator fuel tank maintenance programs. The FAA recognizes that, as long as the ICA are approved by the ACO, ACO approval of the operators' maintenance program changes incorporating those ICA imposes unnecessary burdens on both the operators and the ACOs. With this proposed change, principal inspectors or the cognizant FSDO would be responsible for reviewing and approving program changes to address fuel tank safety. But, as stated, the ICA on which the operator's program is based must be approved by the FAA Oversight Office.

- The instructions for fuel tank maintenance and inspection developed by the TC holders will be referenced as the ''fuel tank ICA.'' The previous rule language referred to ''instructions for maintenance and inspection of the fuel tank system,'' even though it was widely understood throughout the industry that these instructions would be contained in the ICA. Because these requirements are now being aligned with the proposed requirements for EWIS to facilitate operator compliance, and the EWIS requirements refer to ICA as the place where EWIS maintenance instructions may be found, the FAA believes that using a consistent term to refer to the required information in both rules would clarify the common intent of the requirements and make them easier for operators to understand.
- The fuel tank ICA must address the fuel tank system as defined by the airplane's TC, any supplemental TCs, and any field approved incorporated auxiliary fuel tank systems. The current requirements mandate that the ICA must be developed for the ''actual configuration of the fuel tank systems of each affected airplane.'' That wording, however, proved to be unclear to many in the industry. The changed language is proposed to clarify the original intent.

To further clarify what STCs should be included, the FAA has created a list by airplane model of STCs affected by this proposed rule. That list has been placed in the docket for this rulemaking and may also be viewed at *http://qps.airweb.faa.gov/QuickPlace/sfar88ops/Main.nsf.*

The holders of those STCs, as well as the TC holders for the affected airplane models, must develop the ICA as required by SFAR 88. We are also proposing to make it clear that the operator is required to develop the maintenance instructions for field-approved auxiliary fuel tanks. Because there is no other design approval holder for these tanks, there is no other person in a better position to develop these instructions. As with the original requirements of the Fuel Tank Safety Rule, we expect that operators who do not have the expertise to develop these instructions will be able to contract with experts to help them.

The proposed operational rules also make it clear that they apply to ICA developed under SFAR 88, to ICA developed for new or amended certificates under § 25.1529 Amendment 102, and to any later revisions to those ICA. These proposed operational rules would require that operators revise their maintenance and inspection programs to incorporate ICA changes associated with alterations affecting the fuel tank ICA. This is necessary because an alteration may invalidate existing fuel tank system ICA, and compromise the safety objectives of the proposed rules.

H. Advisory Circulars

As indicated in the discussion of ATSRAC recommendations that appeared earlier in this document, the advisory committee has produced four guidance documents as products of the working group activities that have contributed to this proposed rule. Those guidance documents are on maintenance, training, and standard wiring practices manuals, as well as on the proposed new subpart H. We have used these documents as the basis for developing the accompanying advisory circulars. Notices of availability for comment for the training, standard wiring practices, and subpart H ACs are published elsewhere in the **Federal Register**. Notice of availability for the maintenance AC will be published as soon as possible.

Advisory materials for the design approval holder (DAH) requirements of subpart I and for the part 25 electrical system harmonization rules are also made available in notices of availability for comment published elsewhere in the **Federal Register**.

In addition, guidance material entitled ''Process for Developing Instructions for Maintenance and Inspection of Fuel Tank Systems Required by SFAR 88'' was made available as a policy statement on May 28, 2004 at *http://www.airweb.faa.gov/rgl.* Comments have been received and are being reviewed. Advisory Circular 25.981–1B, ''Fuel Tank Ignition Source

Prevention Guidelines,'' gives guidance on showing compliance to certification requirements for prevention of ignition sources within the fuel tanks of transport category airplanes. It also gives guidance on developing ICA for fuel tank systems. It can be found in the docket for this NPRM.

VI. Regulatory Analyses and Notices

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart III, section 44701, ''General requirements.'' Under that section, the FAA is charged with promoting safe flight of civil aircraft in air commerce by prescribing—

- Minimum standards required in the interest of safety for the design and performance of aircraft;
- Regulations and minimum standards in the interest of safety for inspecting, servicing, and overhauling aircraft; and
- Regulations for other practices, methods, and procedures the Administrator finds necessary for safety in air commerce.

This regulation is within the scope of that authority because it prescribes—

- New safety standards for the design of transport category airplanes, and
- New requirements that are necessary for safety for the design, production, operation, and maintenance of those airplanes, and for other practices, methods and procedures relating to those airplanes.

Paperwork Reduction Act

This proposal contains the following new information collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Department of Transportation has submitted the information requirements associated with this proposal to the Office of Management and Budget for its review.

Title: Enhanced Airworthiness Program for Airplane Systems/Fuel Tank Safety (EAPAS/FTS).

Summary: This proposal consists of regulatory changes applying to wiring systems and fuel tank systems in transport category airplanes. Some of those changes would require new information collection. The proposed new information requirements and the persons who would be required to provide that information are described below.

Required Information, Use, and Respondents

(1) Proposed § 25.1711 would require that electrical wiring interconnection systems (EWIS) components be labeled to identify the component, its function, and its design limitations, if any. If the EWIS is part of a system that requires redundancy, the labeling would also include component part number, function, and separation requirements for bundles. This specificity of labeling would be required to ensure that maintenance can be handled properly and with the appropriate caution for maintaining the safety features the wiring system was designed to provide. The information marked on the wires would be used by maintenance personnel for repair and cautionary tasks, and by modifiers so that original safety features are retained during modifications. The future airplane manufacturer and anyone who modifies the airplane would bear the burden of this labeling requirement.

(2) Proposed § 25.1805 would require that existing TC holders develop Instructions for Continued Airworthiness (ICA) for EWIS. Applicants for approval of design changes would be required to develop revisions to those EWIS ICA for any modifications to the airplane that might affect them. Proposed § 25.1739 and Appendix H would apply the requirement for EWIS ICA to future applicants for TCs. EWIS ICA would be used by operators to prepare their maintenance programs. This requirement would be necessary to ensure that wiring is properly maintained and inspected to avoid problems that could affect safety.

(3) Proposed subpart I would also require that TC holders submit to the FAA a plan detailing how they intend to comply with its requirements. This information would be used by the FAA to assist the TC holder in complying with requirements. The compliance plan would be necessary to ensure that TC holders fully understand the requirements, correct any deficiencies in planning in a timely manner, and are able to provide the information needed by the operators for the operators' timely compliance with the rule.

(4) Anyone operating an airplane under part 121 would be required to revise their existing maintenance program to incorporate the maintenance and inspection tasks for EWIS contained in the EWIS ICA required by subpart I. The information incorporated into the maintenance program would be used by maintenance personnel to maintain the integrity of airplane wiring systems. This requirement would be necessary to ensure that wiring is properly maintained and inspected to avoid problems that could affect safety.

(5) As a result of the revised maintenance programs that would be required for airplanes operating under part 121, maintenance personnel will be performing inspections and maintenance procedures to address safety issues specific to wiring systems. Although this NPRM does not specifically require new training, existing § 121.375 requires that certificate holders or persons performing maintenance have a training program to ensure that persons determining the adequacy of such work (including inspectors) are fully informed about the procedures and techniques involved and are competent to perform them. To comply with this requirement in relation to proposals for revised maintenance programs for EWIS included in this NPRM, certificate holders would be required to develop any additional training program needed to ensure that the appropriate personnel are adequately prepared to carry out the revised maintenance programs.

(6) The proposed revision to part 25 Appendix H would require that future manufacturers include acceptable EWIS practices in their ICA, presented in a standard format. This information would be used by maintenance personnel for wiring maintenance and repairs. The requirement is necessary because information about cautionary tasks during maintenance that can prevent situations that could compromise safety need to be available to maintenance personnel. Standard wiring practices manuals, in which this information is presented, often differ from manufacturer to manufacturer and so are difficult for maintenance personnel to find specific information in. The requirement for a standard format is meant to correct this. Because of this proposal, manufacturers would change their Standard Wiring Practices Manuals (SWPM).

Annual Burden Estimate

To provide estimates for the burden associated with this NPRM, the FAA developed categories corresponding to information collection impacts of requirements contained in the proposal. The summary table below contains the impacted entities, average annual hours and hardware costs, and the corresponding average annual cost. Details of the estimates are in the paragraphs below.

Entities impacted	Proposed requirement	Hardware cost	Average annual hours	Average annual cost
Airplane Manufacturers	Wire identification (30 seconds per label)		12,046	$430,524
Airplane Manufacturers	Label	5 cents per label		72,275
Airplane Modifiers	Wire identification (30 seconds per label)		18,417	658,224
Airplane Modifiers	Label	5 cents per label		110,500
Existing TC Holders	Develop ICA		15,743	868,699
Future TC Applicants	Develop ICA		3,578	197,434
Future STC Applicants	Develop ICA		57,828	3,190,949
Airplane Manufacturers	Revise SWPM		1,035	57,111
Airplane Manufacturers	Develop Compliance Plan		132	7,284
Airplane Operators	Revise Maintenance Program		2,744	151,414
Airplane Operators	Develop Training Program		2,376	131,108
Total			113,899	5,875,522

Proposed § 25.1711 would affect airplane manufacturers by requiring additional labeling. Over the 25-year period of analysis, manufacturers would label on average 413 airplanes yearly. The FAA estimates that an additional 3,500 labels might be added to wires in each part 25 airplane, for 1,445,500 labels annually. The additional identification requirement would take roughly 30 seconds, requiring approximately 12,046 annual hours. Using the fully burdened hourly cost of a mechanic ($35.74), the average annual hourly burden for the wire identification requirement on manufacturers is $430,524.

The estimated cost resulting from information collection from TC holders also considers the additional cost of labels. The additional manufacturer identification requirements would require roughly 1,445,500 labels annually. Industry representatives provided the FAA with cost estimates for each label of approximately 5 cents. The estimated annual corresponding cost is $72,275.

Section 25.1711 would also affect airplane modifiers when electrical wiring supplemental type certificates (STC) are installed on airplanes. The FAA estimates there would be an additional 200 labels added each time an affected STC is installed on an airplane. Using 170 as the average annual affected number of STCs, and 65 as the number of installations per STC, the corresponding total annual number of labels for STCs is 2,210,000. The identification requirement would take about 30 seconds for each additional label, requiring an annual burden of roughly 18,417 hours. Using the fully burdened hourly cost of a mechanic ($35.74), the annual burden on airplane modifiers for the wire identification requirement is $658,224.

Estimated costs resulting from information collection from STC applicants consider the additional cost of labels. The additional STC identification requirements would require roughly 2,210,000 labels annually. With the cost of each label approximately 5 cents, the estimated average annual corresponding cost is $110,500.

The proposal would require that existing TC holders develop ICA for EWIS. Over the period of analysis, the FAA estimates the proposal would require 15,743 average annual engineering hours, resulting in an average annual cost of $868,699 (using the fully burdened hourly rate of $55.18 for an engineer).

Proposed §25.1805 would also require future TC applicants to develop ICA for EWIS. The FAA estimates roughly .5 part 25 TCs yearly, with average annual estimated labor hours to perform the analysis of 3,578. This would result in average annual costs of $197,434.

The proposal would require future applicants for STCs to develop ICA for EWIS as well. Over the period of analysis, the FAA estimates it would take 948 annual STC applicants 61 hours to perform the analysis. With engineering costs of $55.18 per hour, the average annual burden would be $3,190,949.

Because of this proposal, manufacturers would change their Standard Wiring Practices Manual (SWPM). The FAA calculates 1,035 as the average annual hours required to update manuals, resulting in an average annual burden of roughly $57,111.

Manufacturers would present a plan for approval describing how they intend to comply with the requirements. The FAA believes the data contained in this plan would be submitted electronically with no cost to submit the plan. We estimate 60 labor hours (per airplane model) to develop a plan and submit data to the FAA. We estimate 3,300 hours for roughly 55 models. The average annual hours are 132, with corresponding average annual costs of $7,284 (using the fully burdened hourly cost of $55.18).

Operators would be required to revise their existing maintenance program to incorporate the maintenance and inspection tasks for EWIS contained in the EWIS ICA. Over the period of analysis, the FAA estimates 68,607 total hours, or 2,744 average annual hours required to revise existing maintenance programs. Using the fully burdened labor cost for an engineer, the average annual planning cost would be $151,414.

The estimated cost to develop training considers the industry's standard training factor of 200 hours per one hour of prepared training material. 600 hours is the estimated training development time for the 3-hour training course for each operator. When combined with 99 operators, the total hours would be 59,400 or 2,376 annually. Combined with the burdened hourly cost of $55.18, the average annual cost for training development would be $131,108.

The agency is soliciting comments to (1) evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (for example, permitting electronic submission of responses).

Individuals and organizations may submit comments on the information collection requirement by December 5, 2005, and should direct them to the address listed in the **ADDRESSES** section of this document.

According to the regulations implementing the Paperwork Reduction

Act of 1995, (5 CFR Part 1320.8(b)(2)(vi)), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for this information collection will be published in the **Federal Register** after it is approved by the Office of Management and Budget.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has determined that there are no ICAO Standards and Recommended Practices that correspond to these proposed regulations.

Regulatory Evaluation Summary

This portion of the preamble summarizes the FAA's analysis of the economic impacts of this NPRM. It also includes summaries of the initial regulatory flexibility determination. We suggest readers seeking greater detail read the full regulatory evaluation, a copy of which we have placed in the docket for this rulemaking.

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (19 U.S.C. 2531–2533) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act requires agencies to consider international standards and, where appropriate, to be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation).

In conducting these analyses, FAA has determined this proposal: Has benefits that justify its costs, is not an economically ''significant regulatory action'' as defined in section 3(f) of Executive Order 12866, and is ''significant'' as defined in DOT's Regulatory Policies and Procedures; would not have a significant economic impact on a substantial number of small entities; would not have an effect on international trade; and would not impose an unfunded mandate on state, local, or tribal governments, or on the private sector. These analyses, available in the docket, are summarized below.

Total Costs and Benefits of This Rulemaking

The estimated cost of this NPRM is $474.4 million ($209.2 million present value) over 25 years. The total estimated benefits are $755.3 million ($340.7 million present value) over 25 years.

Who Is Potentially Affected by This Rulemaking?

- Manufacturers of part 25 airplanes.
- Operators of large transport category airplanes operating under FAR Parts 121 & 129.
- Applicants for amended type certificates and supplemental type certificates.

Cost Assumptions and Sources of Information

Discount rate—7%

Period of analysis—25 Years, 2005 through 2029

Burdened labor rate (as shown in key assumptions & labor rates in regulatory evaluation)—
- Aerospace engineers—$55.18/hour
- Maintenance personnel—$35.74/hour

Value of fatality avoided—$3.0 million (Source: ''Revised Departmental Guidance, Treatment of Value of Life and Injuries in Preparing Economic Evaluations,'' Office of the Secretary of Transportation Memorandum'', January 29, 2002)

Fleet—FAA Flight Standards (SPAS Database)

Fleet Growth (3.82% per year) & Passenger Occupancy Rates (75%)—FAA Aerospace Forecasts Years 2003–2014

Failures, Incidents and Accidents—The National Aviation Safety Data Analysis Center

Aircraft Value—Economic Values for Evaluation of Federal Aviation Administration Investment and Regulatory Programs 1998

Articles Referenced

Wright, T.P. ''American Methods of Aircraft Production,'' 1939.

Wojcik, Leonard A., ''Models To Understand Airline and Air Traffic Management Authority Decision-Making Interactions in Schedule Disruptions: From Simple Games to Agent-Based Models,'' *Handbook of Airline Strategy*, 1992.

Irrgang, M.E., ''Airline Irregular Operations,'' *Handbook of Airline Economics*, 1995.

Alternatives We Considered

Alternative 1—Require operators to clean & inspect each airplane every C-check or every three years, causing an additional $192.5 million ($79.9 million present value) in cleaning and inspection costs, and an additional $104.0 million ($38.6 million present value) in downtime.

This option would result in additional costs of $296.5 million ($118.5 million present value) with no commensurate increase in benefits.

Alternative 2—Require EWIS training for four groups of people in addition to maintenance workers. The groups and additional costs are:

- Electrical/avionic engineers—$4.0 million ($2.4 million present value).
- Individuals involved in engineering or planning work—$0.4 million ($0.4 million present value).
- Flight deck crew—$260.0 million ($126.1 million present value).
- Cabin crew-$91.5 million ($44.4 million present value).

To train these individuals, operators would develop additional courses. The FAA estimates an additional $25.2 million ($24.1 million present value) to develop the necessary training material.

The total estimated additional cost of this alternative is approximately $381.1 million ($197.4 million present value) with no commensurate increase in benefits.

Benefits of This Rulemaking

The FAA estimates $755.3 million ($340.7 million present value) as the total benefits of this proposal.

In the table below, categories of benefits are shown. The middle column gives the nominal values of quantified benefits, while the right-hand column gives the total incremental present value benefits broken down by category type.

Benefits	Nominal values (millions)	Present value (millions)
Non Fatal & Fatal Accidents:		
Non Fatal events	$56.0	$26.1
Fatal events	507.0	236.3
Total	563.0	262.4
EWIS Operational Improvements:		
Averted delays	21.2	8.3
Averted unscheduled landings	152.4	62.4
Averted IFE failures	18.7	7.6
Total	192.3	78.3
Total—All Benefits	755.3	340.7

Costs of This Rulemaking

The FAA estimates $474.3 million ($209.2 million present value) as the total cost of this proposal.

In the table below, the left-hand column specifies the cost component by 14 CFR part, the middle column gives the nominal cost, and the right-hand column gives the total incremental present value costs by 14 CFR part.

Cost component	Nominal values (millions)	Present value (millions)
Part 25 Harmonization	0	0
Part 25 Subpart H	$131.9	$53.8
Part 25 Subpart I	23.3	20.3
Part 121 ICA	319.1	135.1
Parts 91/121/125—Fuel Tank	(*)	
Total	474.3	209.2

* *De minimus.*

Initial Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation.'' To achieve that principle, the RFA requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the Act.

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 RFA provides that the head of the agency may so certify and a regulatory flexibility analysis 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 would not have a significant economic impact on a substantial number of small entities for the following reasons.

Entities potentially affected by this proposal include part 25 manufacturers, applicants for future amended and supplemental type certificates, and part 121 operators of large transport category airplanes.

The FAA uses the size standards from the Small Business Administration for Air Transportation and Aircraft Manufacturing, which specify companies having less than 1,500 employees as small entities.

The current United States part 25 airplane manufacturers include: Boeing, Cessna Aircraft, Gulfstream Aerospace, Learjet (owned by Bombardier), Lockheed Martin, McDonnell Douglas (a wholly-owned subsidiary of The Boeing Company), Raytheon Aircraft, and Sabreliner Corporation. These manufacturers would incur type certificate (TC) and amended TC costs. Because all U.S. transport-aircraft category manufacturers have more than 1,500 employees, none are considered small entities.

Future supplemental type certificate (STC) applicants would incur additional compliance costs. These STC applicants would incur the cost only if the expected revenue from the STC would exceed the expected cost. While future STC costs would be passed on to airplane operators, it is not possible to determine when and which operator would purchase and install such a future STC. Because a future STC applicant would incur the additional compliance cost only if the STC would generate profits, the FAA believes there would not be a significant impact on a substantial number of STC applicants.

The FAA calculated the economic impact on small-business part 121 operators by dividing the annual compliance cost by the firm's annual revenue. The annual estimated average annual cost of the proposal would approach ½ of 1 percent for only two small entities. For the others, the cost impact would be a few hundredths of 1 percent of revenue.

The FAA has determined that: No part 25 manufacturers are small entities, there would not be a significant impact on a substantial number of amended TC or STC applicants, the estimated operator compliance cost as a percent of annual revenue would not be significant.

Accordingly, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Federal Aviation Administration certifies that this proposed rule would not have a significant impact on a substantial number of small entities.

Initial International Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from establishing any standards or engaging in 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 FAA has assessed the potential effect of this proposed rule and determined that it would impose the same costs on domestic and international entities and, thus, would have a neutral trade impact.

Initial Unfunded Mandates Assessment

The Unfunded Mandates Reform Act of 1995 (the Act) is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a ''significant regulatory action.'' The FAA currently uses an inflation-adjusted value of $120.7 million in lieu of $100 million. This proposed rule does not contain such a mandate. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

Executive Order 13132, Federalism

The FAA has analyzed this proposed rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government, and therefore would not have federalism implications.

Plain English

Executive Order 12866 (58 FR 51735, Oct. 4, 1993) requires each agency to write regulations that are simple and easy to understand. We invite your comments on how to make these proposed regulations easier to understand, including answers to questions such as the following:

- Are the requirements in the proposed regulations clearly stated?
- Do the proposed regulations contain unnecessary technical language or jargon that interferes with their clarity?
- Would the regulations be easier to understand if they were divided into more (but shorter) sections?
- Is the description in the preamble helpful in understanding the proposed regulations?

Please send your comments to the address specified in the **ADDRESSES** section.

Environmental Analysis

FAA Order 1050.1E identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act in the absence of extraordinary circumstances. The FAA has determined this proposed rulemaking action qualifies for the categorical exclusion identified in paragraph 312f and involves no extraordinary circumstances.

Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA has analyzed this NPRM under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). We have determined that it is not a ''significant energy action'' under the executive order because it is not a ''significant regulatory action'' under Executive Order 12866, and it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

The following Appendices will not appear in the Code of Federal Regulations.

Appendix A

List of Acronyms

AC—Advisory Circular
ACJ—Advisory Circular Joint
ACO—Aircraft certification office
AD—Airworthiness directive
AFM—Airplane flight manual
ARAC—Aviation Rulemaking Advisory Committee
ASTF—Aging Systems Task Force
ATA—Air Transport Association
ATSRAC—Aging Transport Systems Rulemaking Advisory Committee
CFR—Code of Federal Regulations
CS—Certification Specifications
CWT—Center wing fuel tank
DET—detailed inspection
EAPAS—Enhanced Airworthiness Program for Airplane Systems
EASA—European Aviation Safety Agency
EUROCAE—European Organization for Civil Aviation Equipment
EWIS—Electrical wiring interconnection systems
EZAP—Enhanced zonal analysis procedure
FAA—Federal Aviation Administration
FQIS—Fuel quantity indicating system
FSDO—Flight Standards District Office
GVI—General visual inspection
ICA—Instructions for Continued Airworthiness
ICAO—International Civil Aviation Organization
IFE—In-flight entertainment
IIWG—Intrusive Inspection Working Group
JAA—Joint Aviation Authority
JAR—Joint Aviation Requirements
MS—Military specification
NPRM—notice of proposed rulemaking
NTSB—National Transportation Safety Board
OMB—Office of Management and Budget
RTCA—Radio Technical Commission for Aeronautics
SAE—Society of Automotive Engineers
SCR—Special certification review
SFAR—Special federal aviation regulation
SFAR 88—Special Federal Aviation Regulation 88—Fuel Tank System Fault Tolerance Evaluation Requirements—TC- and STC-holder requirements included in the FTSR
STC—Supplemental type certificate
SWAMP—Severe wind and moisture problem
SWPM—Standard wiring practices manual
TC—Type certificate
TSB—Transportation Safety Board of Canada
WHCSS—White House Commission on Aviation Safety and Security

Appendix B

CORRELATION BETWEEN PROPOSED NEW PART 25 REGULATIONS AND EXISTING REGULATIONS

Proposed new regulation and title	Section	Based on existing requirements in
§ 25.1701 Definition	(a)	none

CORRELATION BETWEEN PROPOSED NEW PART 25 REGULATIONS AND EXISTING REGULATIONS—Continued

Proposed new regulation and title	Section	Based on existing requirements in
	(b)	none
	(c)	none
	(d)	none
§ 25.1703 Function and installation: EWIS	(a)(1)	§ 25.1301(a)
	(a)(2)	§ 25.1301(c)
	(a)(3)	§ 25.1301(d)
	(a)(4)	none
	(b)	none
	(c)	§ 25.869(a)(3)
	(d)	none
§ 25.1705 System safety: EWIS	(a)(1)	§ 25.1309(b)(1)
	(a)(2)	§ 25.1309(b)(1)
	(b)	§ 25.1309(b)(2)
§ 25.1709 System separation: EWIS	(a)	§ 25.1353(a)
	(b)(1)	§ 25.1353(a)
	(b)(2)	none
	(c)	§ 25.1353(b)
	(d)(1)	§ 25.1351(b)(1)
	(d)(2)	§ 25.1351(b)(2)
	(e)(1)	§ 25.869(a)(3)(i)
	(e)(2)	§ 25.869(a)(3)(ii) § 25.1353(d)(3)
	(f)(1)	§ 25.869(a)(3)(i)
	(f)(2)	§ 25.869(a)(3)(ii) § 25.1353(d)(3)
	(g)	§ 25.1353(d)(3)
	(h)(1)	§ 25.1353(d)(3)
	(h)(2).	
	(i)(1)	§ 25.1353(d)(3)
	(i)(2).	
	(i)(3).	
	(j)(1)	§ 25.1353(d)(3)
	(j)(2).	
	(k)	none
	(l)	§ 25.1353(d)(3)
§ 25.1711 Component identification: EWIS.		
	(a)	§ 25.1301(b)
	(b)(1)	none
	(b)(2)	none
	(c)	§ 25.1353(d)(2)
	(d)	none
	(e)	none
§ 25.1713 Fire protection: EWIS	(a)	§ 25.869(a)(1)
	(b)	§ 25.869(a)(2)
	(c)	§ 25.869(a)(4)
§ 25.1717 Electrical bonding and protection against static electricity: EWIS	(a)	§ 25.899
	(b)	none
§ 25.1719 Systems and functions: EWIS	(a)	none
	(b)(1)	§ 25.773(b)(2)
	(b)(2)	§ 25.981
	(b)(3)	§ 25.1165
	(b)(4)	§ 25.1310
	(b)(5)	§ 25.1316
	(b)(6)	§ 25.1351
	(b)(7)	§ 25.1355
	(b)(8)	§ 25.1360
	(b)(9)	§ 25.1362
	(b)(10)	§ 25.1365
	(b)(11)	§ 25.1431(c) § 25.1431(d)
§ 25.1721 Circuit protection devices: EWIS		§ 25.1353(d)(1)
§ 25.1723 Instruments using a power supply: EWIS		§ 25.1331(a)(2) § 25.1303(b)
§ 25.1725 Accessibility provisions: EWIS		§ 25.611
§ 25.1727 Protection of EWIS	(a)(1)	§ 25.855(e)(1)
	(a)(2)	§ 25.855(e)(2)
	(b)	none
	(c)	none
§ 25.1729 Flammable fluid fire protection: EWIS		§ 25.863(b)(3)
§ 25.1731 Powerplants: EWIS	(a)	§ 25.903(b)
	(b)	§ 25.903(d)(1)

CORRELATION BETWEEN PROPOSED NEW PART 25 REGULATIONS AND EXISTING REGULATIONS—Continued

Proposed new regulation and title	Section	Based on existing requirements in
§ 25.1733 Flammable fluid shutoff means: EWIS		§ 25.1189(d)
§ 25.1735 Fire detector systems, general: EWIS		none
§ 25.1737 Powerplant and APU fire detector system: EWIS	(a)	§ 25.1203(e)
	(b)(1)	§ 25.1203(f)(1)
	(b)(2)	§ 25.1203(f)(2)
§ 25.1739 Instructions for Continued Airworthiness: EWIS		§ 25.1529

The term ''none'' in the above table indicates that the section in the proposed regulation is a new rule.

Appendix C

CORRELATION BETWEEN EXISTING PART 25 REGULATIONS AND PROPOSED NEW REGULATIONS

Existing regulation and title	Section	Proposed new regulation
§ 25.611 Accessibility provisions		§ 25.1725
§ 25.773 Pilot compartment view	(b)(2)	§ 25.1719(b)(1)
§ 25.855 Cargo or baggage compartments	(e)(1)	§ 25.1727(a)(1)
	(e)(2)	§ 25.1727(a)(2)
§ 25.863 Flammable fluid fire protection	(b)(3)	§ 25.1729
§ 25.869 Fire protection: systems	(a)(1)	§ 25.1713(a)
	(a)(2)	§ 25.1713(b)
	(a)(4)	§ 25.1713(c)
	(a)(3)(i)	§ 25.1709(e)(1)
	(a)(3)(ii)	§ 25.1709(e)(2)
		§ 25.1709(f)(1)
		§ 25.1709(f)(2)
	(a)(4)	§ 25.1713(c)
§ 25.899 Electrical bonding and protection against static electricity		§ 25.1717(a)
§ 25.903 Engines	(b)	§ 25.1731(a)
	(d)(1)	§ 25.1731(b)
§ 25.1165 Engine ignition systems		§ 25.1719(b)(3)
§ 25.1189 Shutoff means	(d)	§ 25.1733
§ 25.1203 Fire detector system	(e)	§ 25.1737(a)
	(f)(1)	§ 25.1737(b)(1)
	(f)(2)	§ 25.1737(b)(2)
§ 25.1301 Function and installation	(a)	§ 25.1703(a)(1)
	(c)	§ 25.1703(a)(2)
	(b)	§ 25.1711(a)
	(d)	§ 25.1703(a)(3)
§ 25.1303 Flight and navigation instruments	(b)	§ 25.1723
§ 25.1309 Equipment, systems, and installations	(b)(1)	§ 25.1705(a)(1)
		§ 25.1705(a)(2)
	(b)(2)	§ 25.1705(b)
	(e)	§ 25.1707
	(f)	§ 25.1707
§ 25.1316 System lightning protection		§ 25.1719(b)(5)
§ 25.1331 Instruments using a power supply	(a)(2)	§ 25.1723
§ 25.1351 General	(b)(1)	§ 25.1709(d)(1)
	(b)(2)	§ 25.1709(d)(2)
§ 25.1353 Electrical equipment and installations	(a)	§ 25.1709(b)(1)
	(a)	§ 25.1709(a)
	(b)	§ 25.1709(c)
	(d)(1)	§ 25.1721
	(d)(2)	§ 25.1711(c)
	(d)(3)	§ 25.1709(e)(1)
		§ 25.1709(e)(2)
	(d)(3)	§ 25.1709(f)(1)
		§ 25.1709(f)(2)
	(d)(3)	§ 25.1709(g)
	(d)(3)	§ 25.1709(h)(1)
		§ 25.1709(h)(2)
	(d)(3)	§ 25.1709(i)(1)
		§ 25.1709(i)(2)
		§ 25.1709(i)(3)
	(d)(3)	§ 25.1709(j)(1)
		§ 25.1709(j)(2)
	(d)(3)	§ 25.1709(l)
§ 25.1355 Distribution system		§ 25.1719(b)(5)

CORRELATION BETWEEN EXISTING PART 25 REGULATIONS AND PROPOSED NEW REGULATIONS—Continued

Existing regulation and title	Section	Proposed new regulation
§ 25.1360 Precautions against injury		§ 25.1719(b)(6)
§ 25.1362 Electrical supplies for emergency conditions		§ 25.1719(b)(7)
§ 25.1365 Electrical appliances, motors, and transformers		§ 25.1719(b)(8)
§ 25.1431 Electronic equipment	(c) (d)	§ 25.1719(b)(9)
§ 25.1529 Instructions for Continued Airworthiness		§ 25.1739

Appendix D

The tables below indicate which of the current rules will need to be changed to accommodate the new certification requirements and which will remain the same.

EXISTING PART 25 REQUIREMENTS REQUIRING REVISION TO SUPPORT NEW PROPOSED REGULATIONS

Existing regulation	Revision to existing regulation required?
§ 25.611	Yes.
§ 25.773	No.
§ 25.855	Yes.
§ 25.863	No.
§ 25.869	Yes.
§ 25.899	No.
§ 25.903	No.
§ 25.1165	No.
§ 25.1189	No.
§ 25.1203	Yes.
§ 25.1301	Yes.
§ 25.1309	Yes.
§ 25.1310	No.
§ 25.1316	No.
§ 25.1331	No.
§ 25.1351	No.
§ 25.1353	Yes.
§ 25.1355	No.
§ 25.1357	Yes.
§ 25.1360	No.
§ 25.1362	No.
§ 25.1365	No.
§ 25.1431	No.
§ 25.1529	No.

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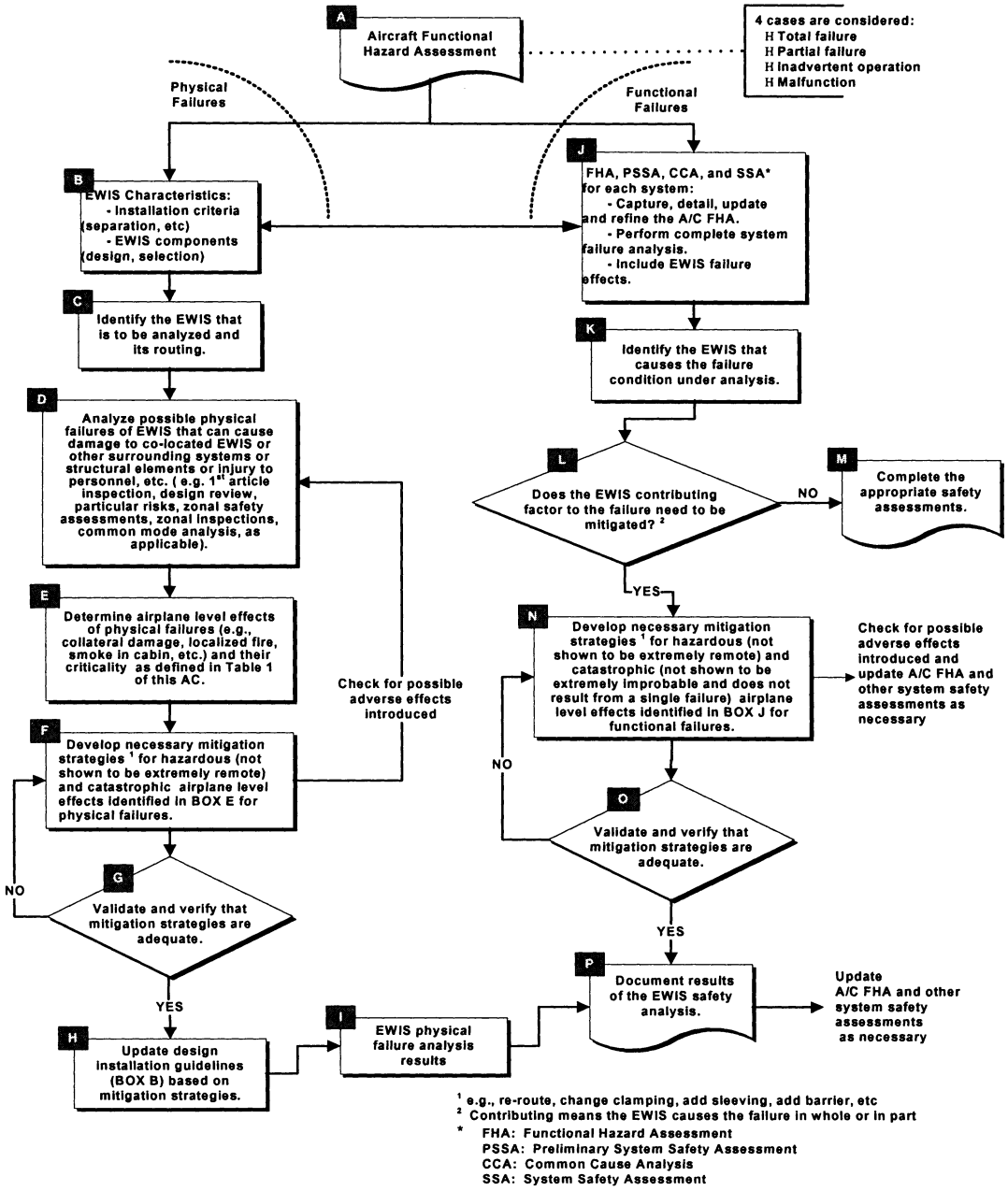
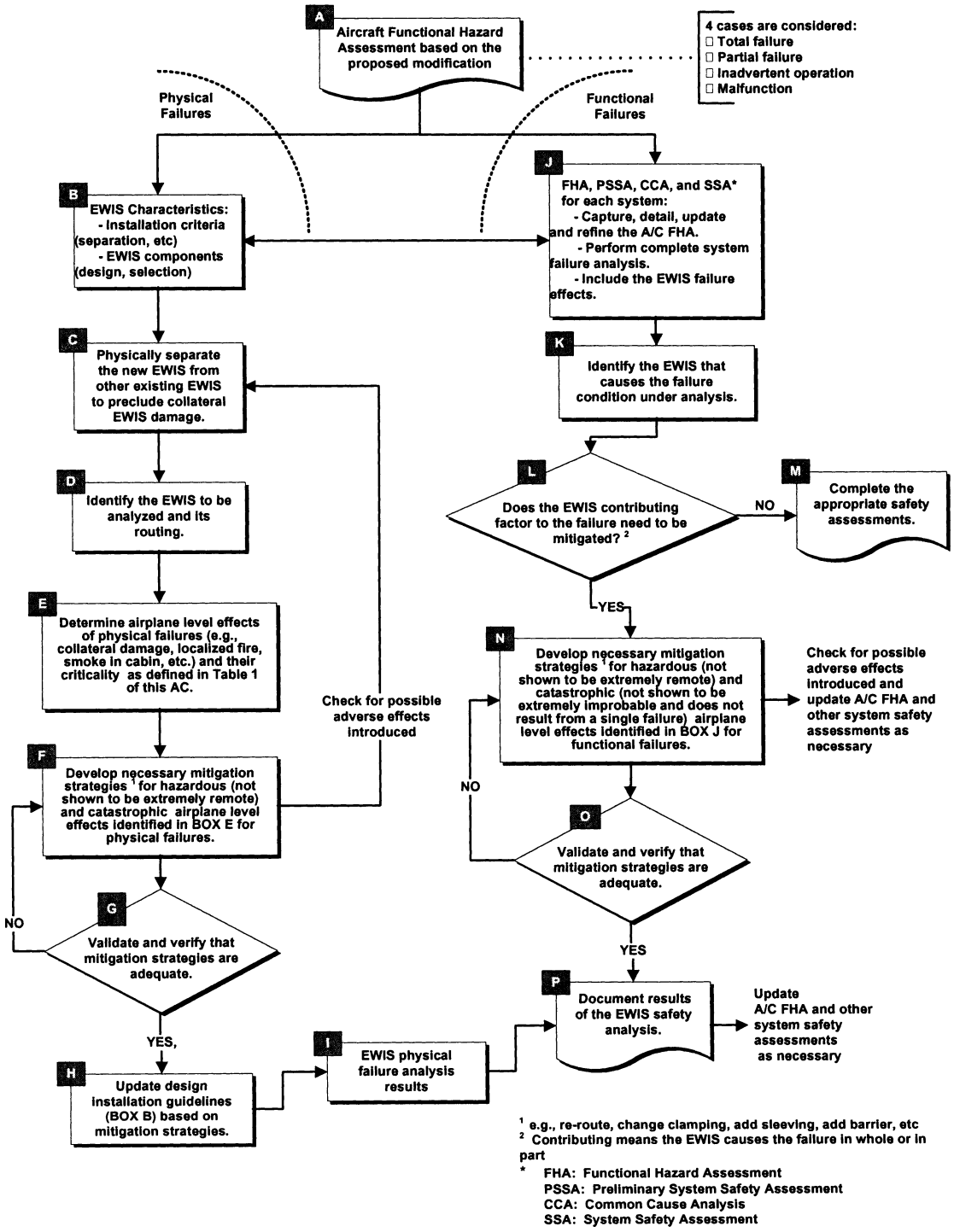
APPENDIX E

Flowchart 1: Pre- and Post-Type Certification Safety Analysis Concept (excerpt from proposed AC 25.17XX, "Certification of Electrical Wiring Interconnection Systems on Transport Category Airplanes")



Mitigation as used in these figures means to eliminate the hazard entirely or minimize its severity and probability to an acceptable level. In the case of the proposed rule, the EWIS failure must be mitigated to a point where the probability of a hazardous failure must be at least extremely remote and the probability of a catastrophic failure must be at least extremely improbable.

Flowchart 2: Post-TC Safety Analysis Concept: (excerpt from proposed AC 25.17XX, "Certification of Electrical Wiring Interconnection Systems on Transport Category Airplanes")



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Discussion of the EWIS Safety Analysis Process as Depicted in Flowcharts 1 and 2 (Excerpt From Proposed AC 25.17XX, ''Certification of Electrical Wiring Interconnection Systems on Transport Category Airplanes'')

The analysis described here is based on a qualitative approach to assessing EWIS safety as opposed to numerical, probability-based quantitative analysis. The intent is not to examine each individual wire and its relation to other wires. Rather, it is to ensure that there are no hazardous combinations. However, in case the ''top down'' analysis process described in this AC determines that a failure in a given bundle may lead to a catastrophic failure condition, the mitigation process may lead to performing a complete analysis of each wire in the relevant bundle.

The analysis described may be accomplished in conjunction with the required aircraft system safety assessments of §§ 25.1309, 25.671, etc.

The classification of failure conditions is given in Table 1 (found in the section-by-section discussion of proposed § 25.1705).

There are two flowcharts contained in this appendix:

- *Flowchart 1* applies to applicants for pre-TC work and for amended TCs, and STCs when the applicant has all data necessary to perform the analysis per Flowchart 1. If Flowchart 1 is used for post-TC modifications the available data must include identification of the systems in the EWIS under consideration for modification and the system functions associated with that EWIS.
- *Flowchart 2* applies to applicants for post-TC modifications when the applicant cannot identify the systems or systems functions contained in EWIS under consideration for modification

The analysis process is initiated by a functional hazard analysis performed at aircraft level identifying catastrophic and hazardous failure events.

The processes in both Flowcharts 1 and 2 identify two aspects: physical and functional failures.

Note: For this discussion the following definitions apply:

Validation: Determination that requirements for a product are sufficiently correct and complete.

Verification: Evaluation to determine that requirements have been met.

Physical Failure Analysis: Only single common cause events or failures need to be addressed during the physical failure analysis as described in this AC and shown on the left hand sides of Flowcharts 1 and 2. The objective of the physical analysis is to protect against single common cause events or failures that may involve single or multiple physical failures. Multiple common cause events or failures need not be addressed.

In relation to physical effects, it should be assumed that wires are carrying electrical energy and, in the case of an EWIS failure, as defined in the preceding paragraph, this energy may result in hazardous or catastrophic effects directly or when combined with other factors (fuel, oxygen, hydraulic fluid, or damage by passengers, for example). These failures, for example, may result in fire, smoke, emission of toxic gases, and damage to co-located systems and structural elements or injury to personnel. This analysis considers all EWIS from all systems regardless of criticality, (autopilot, auto throttle, PA system, IFE system, etc.).

Functional Failure Analysis: The functional failure analysis assumes that electrical wires are carrying power, signal, or information data. Failure of EWIS under these circumstances may lead to aircraft system degradation effects.

Descriptive Text for Flowchart 1

Box A

The functional hazard assessment (FHA) referred to in this box is not a stand-alone separate document specifically created to show compliance with § 25.1705. It is the aircraft level FHA that the applicant will have developed in compliance with § 25.1309 to help demonstrate acceptability of a design concept, identify potential problem areas or desirable design changes, or determine the need for and scope of any additional analyses (refer to AC/ACJ 25.1309–1B).

Physical Failures

Box B

EWIS Characteristics: Use the results of the FHA (BOX A) to identify EWIS installation criteria and definitions of component characteristics. Results of BOX B are fed into the preliminary system safety analysis (PSSA) and system safety analysis (SSA) of BOX J.

Boxes C, D, and E

Validation and Verification of Installation Criteria: Ensure that the EWIS component qualification satisfies the design requirements and that components are selected, used, and installed according to their qualification characteristics and the aircraft constraints linked to their location.

Using available information (e.g., digital mockup, physical mockup, aircraft, historical data), inspections and analyses (e.g., 1st article inspection, design review, particular risks, zonal safety assessments, zonal inspections, common mode analysis, as applicable) should be performed to validate that design and installation criteria are adequate to the zone/function, including multi-systems impact. Also, the inspections and analyses should be used to assess whether design and installation criteria were correctly applied. Special consideration should be given to those areas of the airplane that are known problem areas based on service history and historical data (e.g., arcing, smoke, loose clamps, chafing, arc tracking, interference with other systems, etc.). Special considerations should also be given to cases where new (previously unused) material or other technologies are used.

Deviations from installation and component selection criteria identified by these activities should be evaluated and a determination made about their acceptability. Alternative mitigation strategies should be developed as necessary.

Boxes F & G

Development and Validation of Mitigation Strategy: Identify and develop a mitigation strategy for the physical failures and their adverse effects identified in BOXES D and E.

- Validation and verification of the mitigation solution should ensure that:
- Hazardous failure conditions are extremely remote.
- Catastrophic failure conditions do not result from a single common cause event or failure.
- This mitigation solution does not introduce any new potential failure conditions.

Box H

Incorporate newly developed mitigation strategies (BOX F) into guidelines (BOX B) for further design and inspection and analysis process.

Box I

From the EWIS physical failure analysis, document the physical failures that were addressed, their effects, and the mitigation strategies that were developed. This information supports the final analysis documentation (BOX P).

Functional Failures

Box J

System Safety Assessment: Use results of the aircraft level FHA (BOX A) to guide the system level FHA (BOX J).

EWIS failures identified by § 25.1705 are to be incorporated into the system

level and aircraft level FHA, as necessary, the PSSA, the common cause analysis (CCA), and the SSA. These analyses are performed to satisfy requirements of § 25.1309.

Use results of these analyses to update the EWIS definition (BOX B).

Boxes K, L, and M

Hazardous and Catastrophic Failure Conditions: Use the analyses in BOX J to determine if the EWIS associated with the system under analysis can contribute (in whole or in part) to the failure condition under study. A determination needs to be made about whether the EWIS failure needs to be mitigated. If yes, a mitigation strategy needs to be developed, validated, and verified. If no, the appropriate safety assessment should be completed (e.g., per § 25.1309, § 25.671, etc.).

Boxes N and O

Development and Validation of Mitigation Strategy: Identify and develop a mitigation strategy for the functional failures and adverse effects identified in BOX J.

Validation and verification of the mitigation solution should determine if initial objective is fully reached and confirm that this mitigation solution is compatible with existing installations and installation criteria. If the EWIS was the failure cause, the subsequent mitigation strategy developed may introduce new adverse effects not previously identified by the analysis. A check for any new adverse effects should be accomplished and the aircraft level FHA and other system safety assessments should be updated as necessary.

Box P

After the mitigation strategies have been validated and verified, document the results of the § 25.1705 analysis. Update as necessary the aircraft level FHA that has been developed in support of certification of the proposed modification, in compliance with § 25.1309, (BOX A).

Descriptive Text for Flowchart 2

The main objectives are to ensure that the proposed modification will be correctly designed and installed and will not adversely affect existing systems.

As far as EWIS is concerned, correct incorporation of the modification should be ensured by both good knowledge of original aircraft manufacturer (OAM) installation practices and their correct implementation or by adequate separation of the added EWIS from existing EWIS. In either case, physical analyses should be performed (similar to the physical failures part of Flowchart 1).

Box A

Aircraft level effects must be considered for modified systems or systems added to the aircraft. If the applicant has the aircraft level FHA it should be examined to determine the airplane-level effect of the proposed modification. If the applicant doesn't have the aircraft level FHA, then the applicant must generate an aircraft level FHA based on the proposed modification. This aircraft level FHA would be limited to just those aircraft systems affected by the proposed modification. If it is determined that no aircraft level functional effects are introduced, a statement to this effect and the supporting data is sufficient to satisfy BOX A.

Physical Failures

Box B

EWIS Characteristics: Use results of the aircraft level FHA (BOX A) to identify EWIS installation criteria and definitions of component characteristics. Results of BOX B are fed into the PSSA and SSA of BOX J.

Box C

Separate the EWIS to be added from other existing airplane EWIS since it cannot be determined what systems or system functions are contained in the existing EWIS. Physical separation between the new and existing EWIS must be achieved through separation distance or an appropriate barrier or other means shown to be at least equivalent to the physical separation distance when allowed by § 25.1709. Methods given in the proposed advisory material for § 25.1709 provide an acceptable way to determine adequate separation.

In cases where separation cannot be maintained because of physical constraints (e.g., terminal strips and connectors, etc.), the applicant should accomplish the appropriate analysis to show that no adverse failure conditions exist because of sharing the common device. This requires that the applicant have knowledge of the systems or system functions sharing the common device (e.g. terminal strips and connectors etc.).

Boxes D and E

Validation and Verification of Installation Criteria

Ensure that the EWIS component qualification satisfies the design requirements and that components are selected, used, and installed according to their qualification characteristics and the aircraft constraints linked to their location.

Using available information (e.g., digital mockup, physical mockup, aircraft, historical data), inspections and analyses (e.g. 1st article inspection, design review, particular risks, zonal safety assessments, zonal inspections, common mode analysis, as applicable) should be performed to validate that design and installation criteria are adequate to the zone/function, including multi-systems impact. Also, inspections and analyses should be used to assess whether design and installation criteria were correctly applied. Special consideration should be given to those areas of the airplane that are known problem areas based on service history and historical data (e.g., arcing, smoke, loose clamps, chafing, arc tracking, interference with other systems, etc.). Special consideration should also be given to cases where new (previously unused) material or other technologies are used.

Deviation from installation and component selection criteria identified by these activities should be evaluated and a determination made about their acceptability. Alternative mitigation strategies should be developed as necessary.

Boxes F and G

Development & Validation of Mitigation Strategy

Identify and develop a mitigation strategy for the physical failures and their adverse effects identified in Boxes D and E.

Validation and verification of the mitigation solution should ensure that:

- Hazardous failure conditions are extremely remote.
- Catastrophic failure conditions do not result from a single common cause event or failure.
- This mitigation solution does not introduce any new potential failure conditions.

Box H

Incorporate newly developed mitigation strategies (Box F) into guidelines (Box B) for further design and inspection and analysis process.

Box I

From the EWIS physical failure analysis, document the physical failures that were addressed, their effects, and mitigation strategies that were developed. This information supports the final analysis documentation (Box P).

Functional Failures

Box J

System Safety Assessment

Use the results of the aircraft level FHA (Box A) to guide the system level FHA (Box J).

EWIS failures identified by § 25.1705 are to be incorporated into the system level and aircraft level FHA, as necessary, the PSSA, the CCA, and the SSA. These analyses are performed to satisfy requirements of § 25.1309.

Use results of these analyses to update the EWIS definition (Box B).

Boxes K, L, and M

Hazardous and Catastrophic Failure Conditions

Use the analyses in Box J to determine if the EWIS associated with the system under analysis can contribute (in whole or in part) to the failure condition under study. A determination needs to be made about whether the EWIS failure needs to be mitigated. If yes, a mitigation strategy needs to be developed, validated, and verified. If no, the appropriate safety assessment should be completed (e.g., per § 25.1309, § 25.671, etc.).

Boxes N and O

Development and Validation of Mitigation Strategy

Identify and develop a mitigation strategy for the functional failures and adverse effects identified in Box J.

Validation and verification of the mitigation solution should determine if initial objective is fully reached and confirm that this mitigation solution is compatible with existing installations and installation criteria. If the EWIS was the failure cause, the subsequent mitigation strategy developed may introduce new adverse effects not previously identified by the analysis. A check for any new adverse effects should be accomplished and the aircraft level FHA and other system safety assessments should be updated as necessary.

Box P

After the mitigation strategies have been validated and verified, document the results of the § 25.1705 analysis. Update as necessary the aircraft level FHA that has been developed in support of certification of the proposed modification, in compliance with § 25.1309, (Box A).

List of Subjects

14 CFR Part 1

Air Transportation.

14 CFR Parts 25, 91, 125

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

14 CFR Parts 121, 129

Air carriers, Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The Proposed Amendments

In consideration of the foregoing, the Federal Aviation Administration proposes to amend Chapter I of Title 14, Code of Federal Regulations parts 1, 25, 91, 121, 125, and 129 as follows:

PART 1—DEFINITIONS AND ABBREVIATIONS

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

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

2. Amend § 1.2 to add the following abbreviation in alphabetical order:

§ 1.2 Abbreviations and symbols.

* * * * *

EWIS means electrical wiring interconnection system.

* * * * *

PART 25—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY AIRPLANES

3. The authority citation for part 25 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702 and 44704.

4. Amend § 25.1 by adding a new paragraph (c) to read as follows:

§ 25.1 Applicability.

* * * * *

(c) This part also establishes requirements for holders of type certificates and changes to those certificates to take actions necessary to support the continued airworthiness of transport category airplanes.

5. Amend § 25.2 by adding a new paragraph (d) to read as follows:

§ 25.2 Special retroactive requirements.

* * * * *

(d) In addition to the requirements of this section, subpart I of this part contains requirements that apply to—

(1) Holders of type certificates; and

(2) Applicants for type certificates, changes to type certificates (including service bulletins describing design changes), and supplemental type certificates.

6. Amend § 25.611 by designating the existing paragraph as paragraph (a) and adding new paragraph (b) to read as follows:

§ 25.611 Accessibility provisions.

(a) * * *

(b) EWIS must meet the accessibility requirements of § 25.1725.

7. Amend § 25.855 by removing the word ''wiring'' from paragraph (e) introductory text and adding new paragraph (j) as follows:

§ 25.855 Cargo or baggage compartments.

* * * * *

(j) Cargo or baggage compartment electrical wiring interconnection system components must meet the requirements of § 25.1727.

8. Amend § 25.869 by removing paragraph (a)(4) and revising paragraphs (a)(2) and (a)(3) as follows:

§ 25.869 Fire protection: systems.

(a) * * *

(1) * * *

(2) Equipment that is located in designated fire zones and is used during emergency procedures must be at least fire resistant.

(3) EWIS components must meet the requirements of § 25.1713.

* * * * *

9. Amend part 25 by adding a new § 25.899 to read as follows:

§ 25.899 Electrical bonding and protection against static electricity.

(a) Electrical bonding and protection against static electricity must be designed to minimize accumulation of electrostatic charge that would cause—

(1) Human injury from electrical shock,

(2) Ignition of flammable vapors, or

(3) Interference with installed electrical/electronic equipment.

(b) Compliance with paragraph (a) of this section may be shown by—

(1) Bonding the components properly to the airframe; or

(2) Incorporating other acceptable means to dissipate the static charge so as not to endanger the airplane, personnel, or operation of the installed electrical/electronic systems.

10. Amend § 25.1203 by revising paragraph (e) and adding a new paragraph (h) as follows:

§ 25.1203 Fire detector system.

* * * * *

(e) Components of each fire or overheat detector system in a fire zone must be at least fire-resistant.

* * * * *

(h) EWIS for each fire or overheat detector system in a fire zone must meet the requirements of § 25.1727.

11. Amend § 25.1301 by designating the introductory text as paragraph (a), redesignating paragraphs (a) through (d) as (1) through (4), and adding a new paragraph (b) as follows:

§ 25.1301 Function and installation.

* * * * *

(b) EWIS must meet the requirements of subpart H of this part.

12. Amend § 25.1309 by removing paragraph (e) and redesignating paragraph (g) as paragraph (e) and revising paragraph (f) as follows:

§ 25.1309 Equipment, systems, and installations.

* * * * *

(f) EWIS must be assessed in accordance with the requirements of § 25.1705.

13. Amend part 25 by adding a new § 25.1310, to read as follows:

§ 25.1310 Power source capacity and distribution.

(a) Each installation whose functioning is required for type certification or under operating rules and that requires a power supply is an ''essential load'' on the power supply. The power sources and the system must be able to supply the following power loads in probable operating combinations and for probable durations:

(1) Loads connected to the system with the system functioning normally.

(2) Essential loads, after failure of any one prime mover, power converter, or energy storage device.

(3) Essential loads after failure of—

(i) Any one engine on two-engine airplanes; and

(ii) Any two engines on three-or-more-engined airplanes.

(4) Essential loads for which an alternate source of power is required, after any failure or malfunction in any one power supply system, distribution system, or other utilization system.

(b) In determining compliance with paragraphs (a) (2) and (3) of this section, the power loads may be assumed to be reduced under a monitoring procedure consistent with safety in the kinds of operation authorized. Loads not required in controlled flight need not be considered for the two-engine-inoperative condition on airplanes with three or more engines.

14. Amend § 25.1353 by revising paragraphs (a), (b), and (d) as follows:

§ 25.1353 Electrical equipment and installations.

(a) Electrical equipment and controls must be installed so that operation of any one unit or system of units will not adversely affect the simultaneous operation of any other electrical unit or system essential to safe operation. Any electrical interference likely to be present in the airplane must not result in hazardous effects on the airplane or its systems.

(b) EWIS components must meet the requirements of § 25.1357, § 25.1703, § 25.1709, § 25.1711, and § 25.1721.

(c) * * *

(d) Electrical bonding must provide an adequate electrical return path under both normal and fault conditions, on airplanes having grounded electrical systems.

15. Amend § 25.1357 by revising paragraphs (d) and (f) to read as follows:

§ 25.1357 Circuit protective devices.

* * * * *

(d) If the ability to reset a circuit breaker or replace a fuse is essential to safety in flight, that circuit breaker or fuse must be located and identified so that it can be readily reset or replaced in flight. Where fuses are used, there must be spare fuses for use in-flight equal to at least 50% of the number of fuses of each rating required for complete circuit protection.

* * * * *

(f) For airplane systems for which the ability to remove or reset power during normal operations is necessary, the system must be designed so that circuit breakers are not the primary means to remove or reset system power unless specifically designed for use as a switch.

* * * * *

16. Amend part 25 by adding a new § 25.1360 to read as follows:

§ 25.1360 Precautions against injury.

(a) *Shock.* The electrical system must be designed to minimize risk of electric shock to crew, passengers, and servicing personnel and to maintenance personnel using normal precautions.

(b) *Burns.* The temperature of any part that may be handled by a crewmember during normal operations must not cause dangerous inadvertent movement by the crewmember or injury to the crewmember.

17. Amend part 25 by adding a new § 25.1362 to read as follows:

§ 25.1362 Electrical supplies for emergency conditions.

A suitable electrical supply must be provided to those services required for emergency procedures after an emergency landing or ditching. The circuits for these services must be designed, protected, and installed so that the risk of their causing a fire under these emergency conditions is minimized.

18. Amend part 25 by adding a new § 25.1365 to read as follows:

§ 25.1365 Electrical appliances, motors, and transformers.

(a) Domestic appliances must be designed and installed so that in the event of failures of the electrical supply or control system, the requirements of § 25.1309(b), (c), and (d) will be satisfied. Domestic appliances are items such as cooktops, ovens, coffee makers, water heaters, refrigerators, and toilet flush systems that are placed on the airplane to provide service amenities to passengers.

(b) Galleys and cooking appliances must be installed in a way that minimizes risk of overheat or fire.

(c) Domestic appliances, particularly those in galley areas, must be so installed or protected as to prevent damage or contamination of other equipment or systems from fluids or vapors which may be present during normal operation or as a result of spillage, if such damage or contamination may create a hazardous condition.

(d) Unless compliance with § 25.1309(b) is provided by the circuit protective device required by § 25.1357(a), electric motors and transformers, including those installed in domestic systems, must have a suitable thermal protection device to prevent overheating under normal operation and failure conditions, if overheating would create a smoke or fire hazard.

19. Amend part 25 by adding new subpart H to read as follows:

Subpart H—Electrical Wiring Interconnection Systems (EWIS)

Sec.

25.1701 Definition.
25.1703 Function and installation: EWIS.
25.1705 System safety: EWIS.
25.1707 [Reserved]
25.1709 System separation: EWIS.
25.1711 Component identification: EWIS.
25.1713 Fire protection: EWIS.
25.1715 [Reserved]
25.1717 Electrical bonding and protection against static electricity: EWIS.
25.1719 Systems and functions: EWIS.
25.1721 Circuit protective devices: EWIS.
25.1723 Instruments using a power supply: EWIS.
25.1725 Accessibility provisions: EWIS.
25.1727 Protection of EWIS.
25.1729 Flammable fluid fire protection: EWIS.
25.1731 Powerplants: EWIS.
25.1733 Flammable fluid shutoff means: EWIS.
25.1735 Fire detector systems, general: EWIS.
25.1737 Powerplant and APU fire detector system: EWIS.
25.1739 Instructions for Continued Airworthiness: EWIS.

Subpart H—Electrical Wiring Interconnection Systems (EWIS)

§ 25.1701 Definition.

(a) As used in this chapter, *electrical wiring interconnection system (EWIS)*

means any wire, wiring device, or combination of these, including termination devices, installed in any area of the airplane for the purpose of transmitting electrical energy between two or more intended termination points. Except as provided for in paragraph (c) of this section, this includes:

(1) Wires and cables.

(2) Bus bars.

(3) The termination point on electrical devices, including those on relays, interrupters, switches, contactors, terminal blocks and circuit breakers, and other circuit protection devices.

(4) Connectors, including feed-through connectors.

(5) Connector accessories.

(6) Electrical grounding and bonding devices and their associated connections.

(7) Electrical splices.

(8) Materials used to provide additional protection for wires, including wire insulation, wire sleeving, and conduits that have electrical termination for the purpose of bonding.

(9) Shields or braids.

(10) Clamps and other devices used to route and support the wire bundle.

(11) Cable tie devices.

(12) Labels or other means of identification.

(13) Pressure seals.

(b) The definition in paragraph (a) of this section covers EWIS components inside shelves, panels, racks, junction boxes, distribution panels, and back-planes of equipment racks, including, but not limited to, circuit board back-planes and wire integration units.

(c) Except for the equipment indicated in paragraph (b) of this section, EWIS components inside the following equipment, and the external connectors that are part of that equipment, are excluded from the definition in paragraph (a) of this section:

(1) Electrical equipment or avionics that are qualified to environmental conditions and testing procedures when those conditions and procedures are-(i)

Appropriate for the intended function and operating environment, and

(ii) Acceptable to the FAA.

(2) Portable electrical devices that are not part of the type design of the airplane. This includes personal entertainment devices and laptop computers.

(3) Fiber optics.

§ 25.1703 Function and installation: EWIS.

(a) Each EWIS component installed in any area of the aircraft must:

(1) Be of a kind and design appropriate to its intended function.

(2) Be installed according to limitations specified for the EWIS components.

(3) Function properly when installed.

(4) Be designed and installed in a way that will minimize mechanical strain.

(b) Selection of wires must take into account known characteristics of the wire in relation to each installation and application to minimize the risk of wire damage, including any arc tracking phenomena.

(c) The design and installation of the main power cables, including generator cables, must allow for a reasonable degree of deformation and stretching without failure.

(d) EWIS components located in areas of known moisture accumulation must be adequately protected to minimize any hazardous effects due to moisture.

§ 25.1705 System safety: EWIS.

Each EWIS must be designed and installed so that:

(a) Each catastrophic failure condition—

(1) Is extremely improbable; and

(2) Does not result from a single failure.

(b) Each hazardous failure condition is extremely remote.

§ 25.1707 [Reserved]

§ 25.1709 System separation: EWIS.

(a) Each EWIS must be designed and installed so that under normal conditions and failure conditions as defined by § 25.1309(b)(1) and (b)(2), it will not adversely affect the simultaneous operation of any other systems necessary for continued safe flight, landing, and egress. Unless otherwise stated, for the purposes of this section, adequate physical separation must be achieved by separation distance or by a barrier that provides protection equivalent to that separation distance.

(b) Each EWIS must be designed and installed so that any electrical interference likely to be present in the airplane will not result in hazardous effects upon the airplane or its systems.

(c) Wires and cables carrying heavy current, and their associated EWIS components, must be designed and installed to ensure adequate physical separation and electrical isolation so that damage to essential circuits will be minimized under fault conditions.

(d) Each EWIS associated with independent airplane power sources must be designed and installed to ensure adequate physical separation and electrical isolation so that a fault in any one airplane power source EWIS will not adversely affect any other independent power sources. In addition:

(1) Airplane independent electrical power sources must not share a common ground terminating location.

(2) Airplane system static grounds must not share a common ground terminating location with any of the airplane's independent electrical power sources.

(e) Except to the extent necessary to provide electrical connection to the fuel systems components, the EWIS must be designed and installed with adequate physical separation from fuel lines and other fuel system components, so that:

(1) Any EWIS component failure will not create a hazardous condition.

(2) Any fuel leakage onto EWIS components will not create a hazardous condition.

(f) Except to the extent necessary to provide electrical connection to the hydraulic systems components, EWIS must be designed and installed with adequate physical separation from hydraulic lines and other hydraulic system components, so that:

(1) Any EWIS component failure will not create a hazardous condition.

(2) Any hydraulic fluid leakage onto EWIS components will not create a hazardous condition.

(g) Except to the extent necessary to provide electrical connection to the oxygen systems components, EWIS must be designed and installed with adequate physical separation from oxygen lines and other oxygen system components, so that any EWIS component failure will not create a hazardous condition.

(h) Except to the extent necessary to provide electrical connection to the water/waste systems components, EWIS must be designed and installed with adequate physical separation from water/waste lines and other water/waste system components, so that:

(1) Any EWIS component failure will not create a hazardous condition.

(2) Any water/waste leakage onto EWIS components will not create a hazardous condition.

(i) EWIS must be designed and installed with adequate physical separation between the EWIS and flight or other mechanical control systems cables and associated system components, so that:

(1) Chafing, jamming, or other interference are prevented.

(2) Any EWIS component failure will not create a hazardous condition.

(3) Failure of any flight or other mechanical control systems cables or systems components will not damage the EWIS and create a hazardous condition.

(j) EWIS must be designed and installed with adequate physical

separation between the EWIS components and heated equipment, hot air ducts, and lines, so that:

(1) Any EWIS component failure will not create a hazardous condition.

(2) Any hot air leakage or heat generated onto EWIS components will not create a hazardous condition.

(k) For systems for which redundancy is required, by certification rules, by operating rules, or as a result of the assessment required by § 25.1705, EWIS components associated with those systems must be designed and installed with adequate physical separation.

(l) Each EWIS must be designed and installed so there is adequate physical separation between it and aircraft structure, and so that the EWIS is protected from sharp edges and corners, to minimize potential for abrasion/chafing, vibration damage, and other types of mechanical damage.

§ 25.1711 Component identification: EWIS.

(a) EWIS components must be labeled or otherwise identified using a consistent method that facilitates identification of the wire, its function, and its design limitations, if any.

(b) For systems for which redundancy is required, by certification rules, by operating rules, or as a result of the assessment required by § 25.1705, , EWIS components associated with those systems must be specifically identified with component part number, function, and separation requirement for bundles.

(1) The identification must be placed along the wire, cable, or wire bundle at appropriate intervals and in areas of the airplane where it is readily visible to maintenance, repair, or alteration personnel.

(2) If an EWIS component cannot be marked physically, then other means of identification must be provided.

(c) The identifying markings required by paragraphs (a) and (b) of this section must remain legible throughout the expected service life of the EWIS component.

(d) The means used for identifying each EWIS component as required by this section must not have an adverse effect on the performance of that component throughout its expected service life.

(e) Identification for EWIS modifications to the type design must be consistent with the identification scheme of the original type design.

§ 25.1713 Fire protection: EWIS.

(a) All EWIS components must meet the applicable fire and smoke protection requirements of § 25.831(c) of this part.

(b) EWIS components that are located in designated fire zones and are used during emergency procedures must be at least fire resistant.

(c) Insulation on electrical wire and electrical cable, and materials used to provide additional protection for the wire and cable, installed in any area of the airplane, must be self-extinguishing when tested in accordance with the applicable portions of Appendix F, part I, of 14 CFR part 25.

§ 25.1715 [Reserved]

§ 25.1717 Electrical bonding and protection against static electricity: EWIS.

(a) EWIS components used for electrical bonding and protection against static electricity must meet the requirements of § 25.899.

(b) Electrical bonding provided by EWIS components must provide an adequate electrical return path under both normal and fault conditions, on airplanes having grounded electrical systems.

§ 25.1719 Systems and functions: EWIS.

(a) EWIS associated with systems required for type certification or by operating rules must be considered an integral part of that system and must be considered in showing compliance with the applicable requirements for that system.

(b) For systems to which the following rules apply, the components of EWIS associated with those systems must be considered an integral part of that system or systems and must be considered in showing compliance with the applicable requirements for that system.

(1) § 25.773(b)(2) Pilot compartment view.

(2) § 25.981 Fuel tank ignition prevention.

(3) § 25.1165 Engine ignition systems.

(4) § 25.1310 Power source capacity and distribution.

(5) § 25.1316 System lightning protection.

(6) § 25.1351 General.

(7) § 25.1355 Distribution system.

(8) § 25.1360 Precautions against injury.

(9) § 25.1362 Electrical supplies for emergency conditions.

(10) § 25.1365 Electrical appliances, motors, and transformers.

(11) § 25.1431(c) and (d) Electronic equipment.

§ 25.1721 Circuit protective devices: EWIS.

Electrical wires and cables must be designed and installed so they are compatible with the circuit protection devices required by § 25.1357, so that a fire or smoke hazard cannot be created under temporary or continuous fault conditions.

§ 25.1723 Instruments using a power supply: EWIS.

EWIS components associated with any instrument required by § 25.1303(b) that uses a power supply must be designed and installed so that failure of the EWIS components would not affect that instrument's compliance with § 25.1331(a)(2).

§ 25.1725 Accessibility provisions: EWIS.

Access must be provided to allow inspection and replacement of any EWIS component as necessary for continued airworthiness.

§ 25.1727 Protection of EWIS.

(a) No cargo or baggage compartment may contain any EWIS whose damage or failure may affect safe operation, unless the EWIS is protected so that:

(1) It cannot be damaged by movement of cargo or baggage in the compartment.

(2) Its breakage or failure will not create a fire hazard.

(b) EWIS must be designed and installed to minimize damage and risk of damage to EWIS by movement of people in the airplane during all phases of flight, maintenance, and servicing.

(c) EWIS must be designed and installed to minimize damage and risk of damage to EWIS by items carried onto the aircraft by passengers or cabin crew.

§ 25.1729 Flammable fluid fire protection: EWIS.

EWIS components located in each area where flammable fluid or vapors might escape by leakage of a fluid system must be considered to be a potential ignition source and must meet the requirements of § 25.863.

§ 25.1731 Powerplants: EWIS.

(a) EWIS associated with any powerplant must be designed and installed so that the failure of an EWIS component will not prevent the continued safe operation of the remaining powerplants or require immediate action by any crewmember for continued safe operation, in accordance with the requirements of § 25.903(b).

(b) Design precautions must be taken to minimize hazards to the airplane due to EWIS damage in the event of a powerplant rotor failure or a fire originating within the powerplant that burns through the powerplant case, in accordance with the requirements of § 25.903(d)(1).

§ 25.1733 Flammable fluid shutoff means: EWIS.

EWIS associated with each flammable fluid shutoff means and control must be fireproof or must be located and

protected so that any fire in a fire zone will not affect operation of the flammable fluid shutoff means, in accordance with the requirements of § 25.1189.

§ 25.1735 Fire detector systems, general: EWIS.

EWIS associated with any installed fire protection system must be considered an integral part of the system in showing compliance with the applicable requirements for that system.

§ 25.1737 Powerplant and APU fire detector system: EWIS.

(a) EWIS that are part of each fire or overheat detector system in a fire zone must be at least fire-resistant.

(b) No EWIS component of any fire or overheat detector system for any fire zone may pass through another fire zone, unless:

(1) It is protected against the possibility of false warnings resulting from fires in zones through which it passes; or

(2) Each zone involved is simultaneously protected by the same detector and extinguishing system.

(c) EWIS that are part of each fire or overheat detector system in a fire zone must meet the requirements of § 25.1203.

§ 25.1739 Instructions for Continued Airworthiness: EWIS.

The applicant must prepare Instructions for Continued Airworthiness applicable to EWIS in accordance with Appendix H sections H25.4 and H25.5 to this part that are approved by the FAA.

20. Amend part 25 by adding new subpart I to read as follows.

Subpart I—Continued Airworthiness and Safety Improvements

Sec.
25.1801 Purpose and definition.
25.1803 [Reserved]
25.1805 Electrical wiring interconnection systems (EWIS) maintenance program.

Subpart I—Continued Airworthiness and Safety Improvements

§ 25.1801 Purpose and definition.

(a) This subpart establishes requirements for support of the continued airworthiness of transport category airplanes. These requirements may include performing assessments, developing design changes, developing revisions to Instructions for Continued Airworthiness, and making necessary documentation available to affected persons. This subpart applies to the following persons, as specified in each section of this subpart:

(1) Holders of type certificates.

(2) Applicants for type certificates and changes to type certificates (including service bulletins describing design changes). Applicants for changes to type certificates must comply with the requirements of this subpart in addition to the airworthiness requirements determined applicable under § 21.101 of this subchapter.

(b) For purposes of this subpart, the ''FAA Oversight Office'' is the aircraft certification office or office of the Transport Airplane Directorate with oversight responsibility for the relevant type certificate or supplemental type certificate, as determined by the Administrator.

§ 25.1803 [Reserved]

§ 25.1805 Electrical wiring interconnection systems (EWIS) maintenance program.

(a) Except as provided in paragraph (f) of this section, this section applies to transport category, turbine-powered airplanes with a type certificate issued after January 1, 1958, that, as a result of the original certification, or later increase in capacity, have—

(1) A maximum type-certificated passenger capacity of 30 or more or

(2) A maximum payload capacity of 7,500 pounds or more.

(b) Each person identified in paragraph (c) of this section must develop and submit for review and approval by the FAA Oversight Office Instructions for Continued Airworthiness for the representative airplane's EWIS in accordance with Appendix H paragraphs H25.5(a)(1) and (b) of this part in effect on [effective date of final rule] for each affected type design. For purposes of this section, the ''representative airplane'' is the configuration of each model series airplane that incorporates all variations of EWIS used on that series airplane, and that includes all TC-holder-designed modifications mandated by airworthiness directive as of the effective date of this rule. Each person specified in paragraph (c) of this section must also review any fuel tank system Instructions for Continued Airworthiness developed by that person to comply with SFAR 88 to ensure compatibility with the EWIS Instructions for Continued Airworthiness, including minimizing redundant requirements.

(c) The following persons must comply with the requirements of paragraph (b) of this section before the dates specified.

(1) Holders of type certificates (TC): December 16, 2007.

(2) Applicants for TCs, and amendments to TCs (including service bulletins describing design changes), if the date of application was before [effective date of final rule] and the certificate was issued on or after [effective date of final rule]: December 16, 2007, or the date the certificate is issued, whichever occurs later.

(3) Unless compliance with § 25.1739 of this part is required or elected, applicants for amendments to TCs, if the application was filed after [effective date of final rule]: December 16, 2007, or the date of approval of the application, whichever occurs later.

(4) Applicants for supplemental type certificates (STC), if the date of application was before [effective date of final rule] and the certificate was issued on or after [effective date of final rule]: June 16, 2008, or the date of approval of the application, whichever occurs later.

(5) Unless compliance with § 25.1739 of this part is required or elected, applicants for STCs, if the application was filed after [effective date of final rule]: June 16, 2008, or the date of approval of the application, whichever occurs later.

(d) Each person identified in paragraphs (c)(1), (c)(2), and (c)(4) of this section must submit to the FAA Oversight Office for approval a compliance plan by [insert date 90 days after effective date of final rule]. The compliance plan must include the following information:

(1) A proposed project schedule, identifying all major milestones, for meeting the compliance dates specified in paragraph (c) of this section.

(2) A proposed means of compliance with this section, identifying all required submissions, including all compliance items as mandated in Appendix H paragraphs H25.5(a)(1) and (b) of this part in effect on [effective date of this final rule], and all data to be developed to substantiate compliance.

(3) If the affected person proposes a means of compliance that differs from that described in FAA advisory material, a detailed explanation of how the proposed means will be shown to comply with this section.

(4) A proposal for submitting a draft of all compliance items required by paragraph (d)(2) of this section for review by the FAA Oversight Office not less than 60 days before the compliance time specified in paragraph (c) of this section.

(5) A proposal for how the approved Instructions for Continued Airworthiness will be made available to affected persons.

(e) Each affected person must implement the compliance plan as approved in compliance with paragraph

(d) of this section. If either paragraph (e)(1) or (2) of this section applies, the affected person must submit a corrected plan to the FAA Oversight Office and implement the corrected plan within 30 days after such notification.

(1) The FAA Oversight Office notifies the affected person of deficiencies in the proposed compliance plan and how to correct them.

(2) The FAA Oversight Office notifies the affected person of deficiencies in the person's implementation of the plan and how to correct them.

(f) This section does not apply to the following airplane models:

(1) Convair CV–240, 340, 440, if modified to include turbine engines.

(2) Lockheed L–188

(3) Vickers Armstrong Viscount

(4) Douglas DC–3, if modified to include turbine engines

(5) Bombardier CL–44

(6) Mitsubishi YS–11

(7) British Aerospace BAC 1–11

(8) Concorde

(9) deHavilland D.H. 106 Comet 4C

(10) VFW-Vereinigte Flugtechnische Werk VFW–614

(11) Illyushin Aviation IL 96T

(12) Bristol Aircraft Britannia 305

(13) Handley Page Herald Type 300

(14) Avions Marcel Dassault—Breguet Aviation Mercure 100C

(15) Airbus Caravelle

APPENDIX H TO PART 25—INSTRUCTIONS FOR CONTINUED AIRWORTHINESS

21. Amend H25.1 by revising paragraph (a) to read as follows:

H25.1 General.

(a) This appendix specifies requirements for preparation of Instructions for Continued Airworthiness as required by §§ 25.1529, 25.1739, and applicable provisions of subpart I of this part.

* * * * *

22. Amend H25.4 by revising paragraph (a)(1) and adding new paragraph (a)(3) to read as follows:

H25.4 Airworthiness Limitations section.

(a) * * *

(1) Each mandatory replacement time, structural inspection interval, and related structural inspection procedures approved under § 25.571.

(2) * * *

(3) Any mandatory replacement time of EWIS components as defined in section 25.1701.

* * * * *

23. Amend Appendix H to part 25 by adding new paragraph H25.5 to read as follows:

H25.5 Electrical Wiring Interconnection System (EWIS) Instructions for Continued Airworthiness.

(a) The applicant must prepare Instructions for Continued Airworthiness applicable to EWIS as defined by § 25.1701 that are approved by the FAA and include the following:

(1) Maintenance and inspection requirements for the EWIS developed with the use of an enhanced zonal analysis procedure that includes:

(i) Identification of each zone of the airplane.

(ii) Identification of each zone that contains EWIS.

(iii) Identification of each zone containing EWIS that also contains combustible materials.

(iv) Identification of each zone in which EWIS is in close proximity to both primary and back-up hydraulic, mechanical, or electrical flight controls and lines.

(v) Identification of—

(A) Tasks, and the intervals for performing those tasks, that will reduce the likelihood of ignition sources and accumulation of combustible material, and

(B) Procedures, and the intervals for performing those procedures, that will effectively clean the EWIS components of combustible material if there is not an effective task to reduce the likelihood of combustible material accumulation.

(vi) Instructions for protections and caution information that will minimize contamination and accidental damage to EWIS, as applicable, during performance of maintenance, alteration, or repairs.

(2) Acceptable EWIS maintenance practices in a standard format.

(3) Wire separation requirements as determined under § 25.1709.

(4) Information explaining the EWIS identification method and requirements for identifying any changes to EWIS under § 25.1711.

(5) Electrical load data and instructions for updating that data.

(b) The Instructions for Continued Airworthiness must be in the form of a document appropriate for the information to be provided, and they must be easily recognizable as EWIS Instructions for Continued Airworthiness.

PART 91—GENERAL OPERATING AND FLIGHT RULES

24. The authority for part 91 continues to read as follows:

Authority: 49 U.S.C. 106(g), 1155, 40103, 40113, 40120, 44101, 44111, 44701, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46504, 46506–46507, 47122, 47508, 47528–47531, articles 12 and 29 of the Convention on International Civil Aviation (61 stat. 1180).

25. Amend part 91 by adding new Subpart L as follows:

Subpart L—Continued Airworthiness and Safety Improvements

Sec.
91.1501 Purpose and definition.
91.1503 [Reserved]
91.1505 [Reserved]
91.1507 Fuel tank system maintenance program.

Subpart L—Continued Airworthiness and Safety Improvements

§ 91.1501 Purpose and definition.

(a) This subpart requires operators to support the continued airworthiness of each airplane. These requirements may include, but are not limited to, revising the inspection program, incorporating design changes, and incorporating revisions to Instructions for Continued Airworthiness.

(b) For purposes of this subpart, the ''FAA Oversight Office'' is the aircraft certification office or office of the Transport Airplane Directorate with oversight responsibility for the relevant type certificate or supplemental type certificate, as determined by the Administrator.

§ 91.1503 [Reserved]

§ 91.1505 [Reserved]

§ 91.1507 Fuel tank system maintenance program.

(a) Except as provided in paragraph (g) of this section, this section applies to transport category, turbine-powered airplanes with a type certificate issued after January 1, 1958, that, as a result of original type certification or later increase in capacity, have—

(1) A maximum type-certificated passenger capacity of 30 or more, or

(2) A maximum payload capacity of 7,500 pounds or more.

(b) For each airplane on which an auxiliary fuel tank is installed under a field approval, before December 16, 2007, the operator must submit to the FAA Oversight Office proposed maintenance instructions for the tank that meet the requirements of Special Federal Aviation Regulation No. 88 (SFAR 88) of this chapter.

(c) After December 16, 2008, no operator may operate an airplane identified in paragraph (a) of this section unless the inspection program for that airplane has been revised to include inspections, procedures, and limitations for fuel tank systems.

(d) The proposed fuel tank system inspection program revisions must be based on the following documents:

(1) The applicable type-certificate-holder-developed fuel tank Instructions for Continued Airworthiness, developed under SFAR 88, or under § 25.1529 in

effect on June 6, 2001, approved by the FAA Oversight Office.

(2) The applicable supplemental-type-certificate-holder-developed fuel tank Instructions for Continued Airworthiness, if any, developed under SFAR 88, or Instructions for Continued Airworthiness developed in accordance with § 25.1529 in effect on June 6, 2001, approved by the FAA Oversight Office.

(3) The applicable operator-developed inspection instructions for field-approved auxiliary fuel tanks, if any, approved by the FAA Oversight Office for the type certificate.

(e) After December 16, 2008, before returning an airplane to service after any alterations for which fuel tank Instructions for Continued Airworthiness are developed under SFAR 88, or under § 25.1529 in effect on June 6, 2001, the operator must include in the inspection program for the airplane inspections and procedures for the fuel tank system based on those Instructions for Continued Airworthiness.

(f) The fuel tank system inspection program changes identified in paragraphs (d) and (e) of this section and any later fuel tank system revisions must be submitted to the cognizant Flight Standards District Office (FSDO) for review and approval.

(g) This section does not apply to the following airplane models:

(1) Convair CV–240, 340, 440, if modified to include turbine engines.

(2) Lockheed L–188

(3) Vickers Armstrong Viscount

(4) Douglas DC–3, if modified to include turbine engines

(5) Bombardier CL–44

(6) Mitsubishi YS–11

(7) British Aerospace BAC 1–11

(8) Concorde

(9) deHavilland D.H. 106 Comet 4C

(10) VFW-Vereinigte Flugtechnische Werk VFW–614

(11) Illyushin Aviation IL 96T

(12) Bristol Aircraft Britannia 305

(13) Handley Page Herald Type 300

(14) Avions Marcel Dassault—Breguet Aviation Mercure 100C

(15) Airbus Caravelle

26. Designate the text of current § 91.410 as new § 91.1505, removing and reserving paragraph (b), and revising the section heading to read as follows:

§ 91.1505 Repairs assessment for pressurized fuselages.

§ 91.410 [Reserved]

27. § 91.410 is reserved.

PART 121—OPERATING REQUIREMENTS: DOMESTIC, FLAG, AND SUPPLEMENTAL OPERATIONS

28. The authority citation for part 121 continues to read:

Authority: 49 U.S.C. 106(g), 40113, 40119, 41706, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 44901, 44903–44904, 44912, 45101–45105, 46105, 46301.

29. Amend part 121 by adding new subpart Y to read as follows:

Subpart Y—Continued Airworthiness and Safety Improvements

Sec.
121.901 Purpose and definition.
121.903 [Reserved]
121.905 [Reserved]
121.907 [Reserved]
121.909 [Reserved]
121.911 Electrical wiring interconnection systems (EWIS) maintenance program.
121.913 Fuel tank system maintenance program.

Subpart Y—Continued Airworthiness and Safety Improvements

§ 121.901 Purpose and definition.

(a) This subpart requires persons holding an air carrier or operating certificate under part 119 of this chapter to support the continued airworthiness of each airplane. These requirements may include, but are not limited to, revising the maintenance program, incorporating design changes, and incorporating revisions to Instructions for Continued Airworthiness.

(b) For purposes of this subpart, the ''FAA Oversight Office'' is the aircraft certification office or office of the Transport Airplane Directorate with oversight responsibility for the relevant type certificate or supplemental type certificate, as determined by the Administrator.

§ 121.903 [Reserved]

§ 121.905 [Reserved]

§ 121.907 [Reserved]

§ 121.909 [Reserved]

§ 121.911 Electrical wiring interconnection systems (EWIS) maintenance program.

(a) Except as provided in paragraph (f) of this section, this section applies to transport category, turbine-powered airplanes with a type certificate issued after January 1, 1958, that, as a result of original type certification or later increase in capacity, have—

(1) A maximum type-certificated passenger capacity of 30 or more, or

(2) A maximum payload capacity of 7500 pounds or more.

(b) After December 16, 2008, no certificate holder may operate an airplane identified in paragraph (a) of this section unless the maintenance program for that airplane includes inspections and procedures for electrical wiring interconnection systems (EWIS).

(c) The proposed EWIS maintenance program changes must be based on the following documents:

(1) The applicable EWIS Instructions for Continued Airworthiness, developed by the type certificate holder and approved by the FAA Oversight Office.

(2) The applicable EWIS Instructions for Continued Airworthiness, if any, developed for supplemental type certificates, approved by the FAA Oversight Office.

(d) After December 16, 2008, before returning an airplane to service after any alterations for which EWIS Instructions for Continued Airworthiness are developed, the certificate holder must include in the airplane's maintenance program inspections and procedures for EWIS based on those Instructions for Continued Airworthiness.

(e) The EWIS maintenance program changes identified in paragraphs (c) and (d) of this section and any later EWIS revisions must be submitted to the Principal Inspector for review and approval.

(f) This section does not apply to the following airplane models:

(1) Convair CV–240, 340, 440, if modified to include turbine engines.

(2) Lockheed L–188

(3) Vickers Armstrong Viscount

(4) Douglas DC–3, if modified to include turbine engines

(5) Bombardier CL–44

(6) Mitsubishi YS–11

(7) British Aerospace BAC 1–11

(8) Concorde

(9) deHavilland D.H. 106 Comet 4C

(10) VFW-Vereinigte Flugtechnische Werk VFW–614

(11) Illyushin Aviation IL 96T

(12) Bristol Aircraft Britannia 305

(13) Handley Page Herald Type 300

(14) Avions Marcel Dassault—Breguet Aviation Mercure 100C

(15) Airbus Caravelle

§ 121.913 Fuel tank system maintenance program.

(a) Except as provided in paragraph (g) of this section, this section applies to transport category, turbine-powered airplanes with a type certificate issued after January 1, 1958, that, as a result of original type certification or later increase in capacity, have—

(1) A maximum type-certificated passenger capacity of 30 or more, or

(2) A maximum payload capacity of 7500 pounds or more.

(b) For each airplane on which an auxiliary fuel tank is installed under a

field approval, before December 16, 2007, the certificate holder must submit to the FAA Oversight Office proposed maintenance instructions for the tank that meet the requirements of Special Federal Aviation Regulation No. 88 (SFAR 88) of this chapter.

(c) After December 16, 2008, no certificate holder may operate an airplane identified in paragraph (a) of this section unless the maintenance program for that airplane has been revised to include inspections, procedures, and limitations for fuel tanks systems.

(d) The proposed fuel tank system maintenance program revisions must be based on the following documents:

(1) The applicable type-certificate-holder-developed fuel tank Instructions for Continued Airworthiness, developed under SFAR 88 or under § 25.1529 in effect on June 6, 2001, approved by the FAA Oversight Office.

(2) The applicable supplemental-type-certificate-holder-developed fuel tank Instructions for Continued Airworthiness, if any, developed under SFAR 88, or under § 25.1529 in effect on June 6, 2001, approved by the FAA Oversight Office.

(3) The applicable certificate-holder-developed maintenance instructions for field-approved auxiliary fuel tanks, if any, approved by the FAA Oversight Office for the type certificate.

(e) After December 16, 2008, before returning an aircraft to service after any alteration for which fuel tank Instructions for Continued Airworthiness are developed under SFAR 88 or under § 25.1529 in effect on June 6, 2001, the certificate holder must include in the maintenance program for the airplane inspections and procedures for the fuel tank system based on those Instructions for Continued Airworthiness.

(f) The fuel tank system program changes identified in paragraphs (d) and (e) of this section and any later fuel tank system revisions must be submitted to the Principal Inspector for review and approval.

(g) This section does not apply to the following airplane models:

(1) Convair CV–240, 340, 440, if modified to include turbine engines.

(2) Lockheed L–188

(3) Vickers Armstrong Viscount

(4) Douglas DC–3, if modified to include turbine engines

(5) Bombardier CL–44

(6) Mitsubishi YS–11

(7) British Aerospace BAC 1–11

(8) Concorde

(9) deHavilland D.H. 106 Comet 4C

(10) VFW-Vereinigte Flugtechnische Werk VFW–614

(11) Illyushin Aviation IL 96T

(12) Bristol Aircraft Britannia 305

(13) Handley Page Herald Type 300

(14) Avions Marcel Dassault—Breguet Aviation Mercure 100C

(15) Airbus Caravelle

§ 121.368 [Redesignated as § 121.905]

30. Redesignate § 121.368 as new § 121.905 and reserve §121.368.

§ 121.368 [Reserved]

31. § 121.368 is reserved.

32. Designate the text of current § 121.370 as new § 121.907, removing and reserving paragraph (b), and revising the section heading to read as follows:

§ 121.907 Repairs assessment for pressurized fuselages.

§ 121.370 [Reserved]

33. § 121.370 is reserved.

§ 121.370a [Redesignated as §121.909]

34. Redesignate § 121.370a as new §121.909 and reserve § 121.370a.

§ 121.370a [Reserved]

35. § 121.370a is reserved.

PART 125—CERTIFICATION AND OPERATIONS: AIRPLANES HAVING A SEATING CAPACITY OF 20 OR MORE PASSENGERS OR A MAXIMUM PAYLOAD CAPACITY OF 6,000 POUNDS OR MORE; AND RULES GOVERNING PERSONS ON BOARD SUCH AIRCRAFT

36. The authority citation for part 125 continues to read:

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44705, 44710–44711, 44713, 44716–44717, 44722.

37. Amend part 125 by adding new subpart M to read as follows:

Subpart M—Continued Airworthiness and Safety Improvements

Sec.
125.501 Purpose and definition.
125.503 [Reserved]
125.505 [Reserved]
125.507 Fuel tank system inspection program.

Subpart M—Continued Airworthiness and Safety Improvements

§ 125.501 Purpose and definition.

(a) This subpart requires operators to support the continued airworthiness of each airplane. These requirements may include, but are not limited to, revising the inspection program, incorporating design changes, and incorporating revisions to Instructions for Continued Airworthiness.

(b) For purposes of this subpart, the ''FAA Oversight Office'' is the aircraft certification office or office of the Transport Airplane Directorate with oversight responsibility for the relevant type certificate or supplemental type certificate, as determined by the Administrator.

§ 125.503 [Reserved]

§ 125.505 [Reserved]

§ 125.507 Fuel tank system inspection program.

(a) Except as provided in paragraph (g) of this section, this section applies to transport category, turbine-powered airplanes with a type certificate issued after January 1, 1958, that, as a result of original type certification or later increase in capacity, have—

(1) a maximum type-certificated passenger capacity of 30 or more, or

(2) a maximum payload capacity of 7500 pounds or more.

(b) For each airplane on which an auxiliary fuel tank is installed under a field approval, before December 16, 2007, the certificate holder must submit to the FAA Oversight Office proposed maintenance instructions for the tank that meet the requirements of Special Federal Aviation Regulation No. 88 (SFAR 88) of this chapter.

(c) After December 16, 2008, no certificate holder may operate an airplane identified in paragraph (a) of this section unless the inspection program for that airplane has been revised to include inspections, procedures, and limitations for fuel tank systems.

(d) The proposed fuel tank system inspection program revisions must be based on the following documents:

(1) The applicable type-certificate-holder-developed fuel tank Instructions for Continued Airworthiness, developed under SFAR 88, or under § 25.1529 in effect on June 6, 2001, approved by the FAA Oversight Office.

(2) The applicable supplemental-type-certificate-holder-developed fuel tank Instructions for Continued Airworthiness, if any, developed under SFAR 88, or under § 25.1529 in effect on June 6, 2001, approved by the FAA Oversight Office.

(3) The applicable certificate-holder-developed inspection instructions for field-approved auxiliary fuel tanks, if any, approved by the FAA Oversight Office for the type certificate.

(e) After December 16, 2008, before returning an aircraft to service after any alteration for which fuel tank Instructions for Continued Airworthiness are developed under SFAR 88, or under § 25.1529 in effect on June 6, 2001, the certificate holder must include in the inspection program for

the airplane inspections and procedures for the fuel tank system based on those Instructions for Continued Airworthiness.

(f) The fuel tank system program changes identified in paragraphs (d) and (e) of this section and any later fuel tank system revisions must be submitted to the Principal Inspector for review and approval.

(g) This section does not apply to the following airplane models:

(1) Convair CV–240, 340, 440, if modified to include turbine engines.

(2) Lockheed L–188

(3) Vickers Armstrong Viscount

(4) Douglas DC–3, if modified to include turbine engines

(5) Bombardier CL–44

(6) Mitsubishi YS–11

(7) British Aerospace BAC 1–11

(8) Concorde

(9) deHavilland D.H. 106 Comet 4C

(10) VFW-Vereinigte Flugtechnische Werk VFW–614

(11) Illyushin Aviation IL 96T

(12) Bristol Aircraft Britannia 305

(13) Handley Page Herald Type 300

(14) Avions Marcel Dassault—Breguet Aviation Mercure 100C

(15) Airbus Caravelle

38. Designate the text of current § 125.248 as new § 125.505, removing and reserving paragraph (b), and revising the section heading to read as follows:

§ 125.505 Repairs assessment for pressurized fuselages.

§ 125.248 [Reserved]

39. § 125.248 is reserved.

PART 129—OPERATIONS: FOREIGN AIR CARRIERS AND FOREIGN OPERATORS OF U.S.-REGISTERED AIRCRAFT ENGAGED IN COMMON CARRIAGE

40. The authority citation for part 129 continues to read:

Authority: 49 U.S.C. 1372, 40113, 40119, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 44901–44904, 44906, 44912, 46105, Pub. L. 107–71 sec. 104.

41. Amend part 129 by:

A. Designating the existing sections, except §§ 129.16, 129.32, and 129.33, as ''Subpart A—General'';

B. Revising paragraph (b) of § 129.1;

C. Redesignating §§ 129.16, 129.32, and 129.33 as §§ 129.109, 129.107, and 129.105, respectively, and revising the heading for newly designated § 129.107 and removing and reserving paragraph (b); and

D. Adding a new subpart B.

The revisions and additions read as follows:

Subpart A—General

§ 129.1 Applicability and definitions.

* * * * *

(b) Operations of U.S.-registered aircraft solely outside the United States. In addition to the operations specified under paragraph (a) of this section, §§ 129.14 and 129.20 and subpart B of this part also apply to U.S.-registered aircraft operated solely outside the United States in common carriage by a foreign person or foreign air carrier.

* * * * *

Subpart B—Continued Airworthiness and Safety Improvements

Sec.
129.101 Purpose and definition.
129.103 [Reserved]
129.105 Aging airplane inspections and records reviews for U.S.-registered multiengine aircraft.
129.107 Repairs assessment for pressurized fuselages.
129.109 Supplemental inspections for U.S.-registered aircraft.
129.111 Electrical wiring interconnection systems (EWIS) maintenance program.
129.113 Fuel tank system maintenance program.

Subpart B—Continued Airworthiness and Safety Improvements

§ 129.101 Purpose and definition.

(a) This subpart requires a foreign person or foreign air carrier operating a U.S. registered airplane in common carriage to support the continued airworthiness of each airplane. These requirements may include, but are not limited to, revising the maintenance program, incorporating design changes, and incorporating revisions to Instructions for Continued Airworthiness.

(b) For purposes of this subpart, the ''FAA Oversight Office'' is the aircraft certification office or office of the Transport Airplane Directorate with oversight responsibility for the relevant type certificate or supplemental type certificate, as determined by the Administrator.

§ 129.103 [Reserved]

§ 129.105 [Redesignated from § 129.33]

§ 129.107 [Redesignated from § 129.32]

§ 129.109 [Redesignated from §129.16]

§ 129.111 Electrical wiring interconnection systems (EWIS) maintenance program.

(a) Except as provided in paragraph (f) of this section, this section applies to transport category, turbine-powered airplanes with a type certificate issued after January 1, 1958, that, as a result of original type certification or later increase in capacity, have—

(1) A maximum type-certificated passenger capacity of 30 or more, or

(2) A maximum payload capacity of 7500 pounds or more.

(b) After December 16, 2008, no foreign person or foreign air carrier may operate an airplane identified in paragraph (a) of this section unless the maintenance program for that airplane includes inspections and procedures for EWIS.

(c) The proposed EWIS maintenance program changes must be based on the following documents:

(1) The applicable EWIS Instructions for Continued Airworthiness, developed by the type certificate holder and approved by the FAA Oversight Office.

(2) The applicable EWIS Instructions for Continued Airworthiness, if any, developed for supplemental type certificates, approved by the FAA Oversight Office.

(d) After December 16, 2008, before returning an airplane to service after any alterations for which EWIS Instructions for Continued Airworthiness are developed, the foreign person or foreign air carrier must include in the maintenance program for that airplane inspections and procedures for EWIS based on those Instructions for Continued Airworthiness.

(e) The EWIS maintenance program changes identified in paragraphs (c) and (d) of this section and any later EWIS revisions must be submitted to the Principal Inspector or cognizant Flight Standards International Field Office for review and approval.

(f) This section does not apply to the following airplane models:

(1) Convair CV–240, 340, 440, if modified to include turbine engines.

(2) Lockheed L–188

(3) Vickers Armstrong Viscount

(4) Douglas DC–3, if modified to include turbine engines

(5) Bombardier CL–44

(6) Mitsubishi YS–11

(7) British Aerospace BAC 1–11

(8) Concorde

(9) deHavilland D.H. 106 Comet 4C

(10) VFW-Vereinigte Flugtechnische Werk VFW–614

(11) Illyushin Aviation IL 96T

(12) Bristol Aircraft Britannia 305

(13) Handley Page Herald Type 300

(14) Avions Marcel Dassault-Breguet Aviation Mercure 100C

(15) Airbus Caravelle

§ 129.113 Fuel tank system maintenance program.

(a) Except as provided in paragraph (g) of this section, this section applies to transport category, turbine-powered airplanes with a type certificate issued after January 1, 1958, that, as a result of

original type certification or later increase in capacity, have—

(1) A maximum type-certificated passenger capacity of 30 or more, or

(2) A maximum payload capacity of 7500 pounds or more.

(b): For each airplane on which an auxiliary fuel tank is installed under a field approval, before December 16, 2007, the foreign person or foreign air carrier operating the airplane must submit to the FAA Oversight Office proposed maintenance instructions for the tank that meet the requirements of Special Federal Aviation Regulation No. 88 (SFAR 88) of this chapter.

(c) After December 16, 2008, no foreign person or foreign air carrier may operate an airplane identified in paragraph (a) of this section unless the maintenance program for that airplane has been revised to include inspections, procedures, and limitations for fuel tanks systems.

(d) The proposed fuel tank system maintenance program revisions must be based on the following documents:

(1) The applicable type-certificate-holder-developed fuel tank Instructions for Continued Airworthiness, developed under SFAR 88, or under § 25.1529 in effect on June 6, 2001, approved by the FAA Oversight Office.

(2) The applicable supplemental-type-certificate-holder-developed fuel tank Instructions for Continued Airworthiness, if any, developed under SFAR 88, or Instructions for Continued Airworthiness developed in accordance with § 25.1529 in effect on June 6, 2001, approved by the FAA Oversight Office.

(3) The applicable maintenance instructions for field-approved auxiliary fuel tanks, if any, developed by the foreign person or foreign air carrier operating the airplane and approved by the FAA Oversight Office for the type certificate.

(e) After December 16, 2008, before returning an airplane to service after any alteration for which fuel tank Instructions for Continued Airworthiness are developed under SFAR 88, or under § 25.1529 in effect on June 6, 2001, the foreign person or foreign air carrier must include in the maintenance program for the airplane inspections and procedures for the fuel tank system based on those Instructions for Continued Airworthiness.

(f) The fuel tank system program changes identified in paragraphs (d) and (e) of this section and any later fuel tank system revisions must be submitted to the Principal Inspector or cognizant Flight Standards International Field Office for review and approval.

(g) This section does not apply to the following airplane models:

(1) Convair CV–240, 340, 440, if modified to include turbine engines.

(2) Lockheed L–188

(3) Vickers Armstrong Viscount

(4) Douglas DC–3, if modified to include turbine engines

(5) Bombardier CL–44

(6) Mitsubishi YS–11

(7) British Aerospace BAC 1–11

(8) Concorde

(9) deHavilland D.H. 106 Comet 4C

(10) VFW-Vereinigte Flugtechnische Werk VFW–614

(11) Illyushin Aviation IL 96T

(12) Bristol Aircraft Britannia 305

(13) Handley Page Herald Type 300

(14) Avions Marcel Dassault—Breguet Aviation Mercure 100C

(15) Airbus Caravelle

Issued in Washington, DC on September 22, 2005.

James J. Ballough,

Director, Flight Standards Service.

John J. Hickey,

Director, Aircraft Certification Service.

[FR Doc. 05–19419 Filed 10–5–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Proposed Advisory Circular 25.17XX, ''Certification of Electrical Wiring Interconnection Systems on Transport Category Airplanes''

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability and request for comments.

SUMMARY: This notice announces the availability of and requests comments on a proposed advisory circular (AC) that sets forth acceptable methods of compliance with 14 CFR part 25, subpart H, sections §§25.1701 through 25.1739 and sections H25.4 and H25.5 of Appendix H to part 25. This proposed AC complements revisions to the airworthiness standards that are being proposed by a separate notice. This notice is necessary to give all interested persons an opportunity to present their views on the proposed AC.

DATES: Comments must be received on or before December 5, 2005.

ADDRESSES: Send all comments on the proposed AC to: Federal Aviation Administration, Attention: Stephen Slotte, ANM–111, Airplane & Flight Crew Interface, Federal Aviation Administration, 1601 Lind Avenue SW., Renton, WA 98055–4056; telephone (425) 227–2315; facsimile (425) 227–1320, e-mail *steve.slotte@faa.gov.* Comments may be inspected at the above address between 7:30 a.m. and 4 p.m. weekdays, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Annette Kovite, Transport Standards Staff, at the address above, telephone (425) 227–1262.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on the proposed AC by submitting such written data, views, or arguments as they may desire. Commenters should identify AC 25.17XX and submit comments, in duplicate, to the address specified above. All communications received on or before the closing date for comments will be considered by the FAA before issuing the final AC. The proposed AC can be found and downloaded from the Internet at *http://www.airweb.faa.gov/rgl* under ''Draft Advisory Circulars.'' A paper copy of the proposed AC may be obtained by contacting the person named above under the caption **FOR FURTHER INFORMATION CONTACT**.

Discussion

This proposed AC provides guidance for certification of electrical wiring interconnection systems on transport category airplanes in accordance with 14 CFR part 25, subpart H—Electrical Wiring Interconnection Systems (EWIS), and section H25.4 and H25.5 of Appendix H to part 25. The guidance provided in this proposed AC is directed to transport category airplane manufacturers, modifiers, foreign regulatory authorities, FAA transport airplane type certification engineers, designees, and FAA Flight Standards personnel. It is one means, but not the only means, of complying with the part 25 revisions proposed in Notice No. 05–08, entitled ''Enhanced Airworthiness Program for Airplane Systems/Fuel Tank Safety (EAPAS/FTS),'' published in this same edition of the **Federal Register**. Issuance of AC 25.17XX is contingent on final adoption of the proposed revisions to part 25.

Issued in Washington, DC, on September 22, 2005.

John J. Hickey,

Director, Aircraft Certification Service.

[FR Doc. 05–19408 Filed 10–5–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Proposed Advisory Circular 25–YY, ''Development of Standard Wiring Practices Documentation''

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability and request for comments.

SUMMARY: This notice announces the availability of and requests comments on a proposed advisory circular (AC) that sets forth acceptable methods of compliance with section H25.5(a)(2) of Appendix H to 14 CFR part 25 concerning development of an electrical system standard wiring practices document. This proposed AC complements revisions to the airworthiness standards that are being proposed by a separate notice. This notice is necessary to give all interested persons an opportunity to present their views on the proposed AC.

DATES: Comments must be received on or before December 5, 2005.

ADDRESSES: Send all comments on the proposed AC to: Federal Aviation Administration, Attention: Stephen Slotte, ANM–111, Airplane & Flight Crew Interface, Federal Aviation Administration, 1601 Lind Avenue SW., Renton, WA 98055–4056; telephone (425) 227–2315; facsimile (425) 227–1320, e-mail *steve.slotte@faa.gov.* Comments may be inspected at the above address between 7:30 a.m. and 4 p.m. weekdays, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Annette Kovite, Transport Standards Staff, at the address above, telephone (425) 227–1262.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on the proposed AC by submitting such written data, views, or arguments as they may desire. Commenters should identify AC 25–YY and submit comments, in duplicate, to the address specified above. All communications received on or before the closing date for comments will be considered by the FAA before issuing the final AC. The proposed AC can be found and downloaded from the Internet at *http://www.airweb.faa.gov/rgl* under ''Draft Advisory Circulars.'' A paper copy of the proposed AC may be obtained by contacting the person named above under the caption **FOR FURTHER INFORMATION CONTACT**.

Discussion

This proposed AC provides guidance for demonstrating compliance with the transport category airplane certification requirements of H25.5 Electrical Wiring Interconnection System (EWIS) Instructions for Continued Airworthiness. The guidance provided in this proposed AC is applicable to all air carriers, air operators, holders of type certificates, holders of STCs, maintenance providers, and repair stations operating under 14 CFR parts 21, 25, 43, 91, 121, 125, 135, and 145.

This guidance is a product of the Aging Non-Structural Systems Plan. The FAA developed the Aging Non-Structural Systems Plan to address recommendations of the White House Commission on Aviation Safety and Security (WHCSS). That commission recommended that, in cooperation with airlines and manufacturers, the FAA's Aging Aircraft Program should be expanded to cover nonstructural systems.

The commission was concerned that existing directives, procedures, quality assurance, and inspections may not be sufficient to prevent safety-related problems caused by corrosion and other deteriorating effects on nonstructural components of commercial aircraft as they age. To fully address the WHCSS recommendations on aging systems, we

formed an Aging Nonstructural Systems study team. This team, led by the Transport Airplane Directorate (TAD), conducted an inspection of systems in several aging airplanes. It then met with FAA principal maintenance inspectors (PMI) tasked with oversight of major air carriers to evaluate the need for additional work in addressing the commission's concerns. The team concluded that additional work was warranted and that industry involvement in this work was essential.

The elements of the Aging Nonstructural Systems Plan were grouped into five major tasks. One task was to define standards for a simplified chapter 20, commonly referred to as the standard wiring practices manual (SWPM), of manufacturers' airplane maintenance manuals, and to define a process for training development based on the airline's customized chapter 20. This task was assigned to industry-represented Task 4 Working Group.

The tasking statement assigned to the Task 4 Working Group also required the group to consider ''simplification'' of chapter 20 of wiring diagram manuals (WDM). The working group concluded that simplification of the chapter 20 SWPM by end users was not appropriate for several reasons:

1. It would not be practical, because end-users do not have access to the source data.
2. It would result in different standards from one end-user to another.
3. End-users would need the details for inspection, maintenance, and repair that are currently in the manufacturer's SWPM.

At the conclusion of Aging Transport Non-Structural Systems Plan Phase I, the Task 4 Working Group stated that the current presentation and arrangement of standard wiring practices make it difficult for an aircraft maintenance technician to locate and extract pertinent and applicable data necessary to effect satisfactory electrical repairs.

Subsequent tasks assigned to the Standard Wire Practice Manual Harmonization Working Group required the development of a standardized SWPM format and a definition of the minimum content to be included in an SWPM.

This guidance presents one means, but not the only means, of complying with the part 25 revisions proposed in Notice No. 05–08, entitled ''Enhanced Airworthiness Program for Airplane Systems/Fuel Tank Safety (EAPAS/FTS),'' published in this same edition of the **Federal Register**. Issuance of AC 25–YY is contingent on final adoption of the proposed revisions to part 25.

Issued in Washington, DC, on September 22, 2005.

John J. Hickey,

Director, Aircraft Certification Service.

[FR Doc. 05–19409 Filed 10–5–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Proposed Advisory Circular 120–YY, ''Aircraft Electrical Wiring Interconnection Systems Training Program''

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability and request for comments.

SUMMARY: This notice announces the availability of and requests comments on a proposed advisory circular (AC) that sets forth acceptable methods of developing a training program for electrical wiring interconnection systems. This proposed AC complements revisions to the airworthiness standards that are being proposed by a separate notice. This notice is necessary to give all interested persons an opportunity to present their views on the proposed AC.

DATES: Comments must be received on or before December 5, 2005.

ADDRESSES: Send all comments on the proposed AC to: Federal Aviation Administration, Attention: Stephen Slotte, ANM–111, Airplane & Flight Crew Interface, Federal Aviation Administration, 1601 Lind Avenue SW., Renton, WA 98055–4056; telephone (425) 227–2315; facsimile (425) 227–1320, e-mail *steve.slotte@faa.gov.* Comments may be inspected at the above address between 7:30 a.m. and 4 p.m. weekdays, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Annette Kovite, Transport Standards Staff, at the address above, telephone (425) 227–1262.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on the proposed AC by submitting such written data, views, or arguments as they may desire. Commenters should identify AC 120–YY and submit comments, in duplicate, to the address specified above. All communications received on or before the closing date for comments will be considered by the FAA before issuing the final AC. The proposed AC can be found and downloaded from the Internet at *http://www.airweb.faa.gov/rgl* under ''Draft Advisory Circulars.'' A paper copy of the proposed AC may be obtained by contacting the person named above under the caption **FOR FURTHER INFORMATION CONTACT**.

Discussion

This proposed AC provides guidance for developing an electrical wiring interconnection systems training program. This guidance is directed to air carriers, air operators, repair stations, and maintenance providers. It may also be used by type certificate holders, supplemental type certificate holders, and persons performing field approval modifications or repairs. The recommendations in this proposed AC can be applied to any aircraft training program.

Issued in Washington, DC, on September 22, 2005.

James J. Ballough,

Director, Flight Standards Service, Aviation Safety.

John J. Hickey,

Director, Aircraft Certification Service, Aviation Safety.

[FR Doc. 05–19410 Filed 10–5–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Proposed Advisory Circular 25.869–1, ''Fire Protection Systems''

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability and request for comments.

SUMMARY: This notice announces the availability of and requests comments on a proposed advisory circular (AC) that sets forth acceptable methods of compliance with §§ 25.863 and 25.869 concerning flammable fluid fire protection and fire protection systems. This proposed AC complements revisions to the airworthiness standards that are being proposed by a separate notice. This notice is necessary to give all interested persons an opportunity to present their views on the proposed AC.

DATES: Comments must be received on or before December 5, 2005.

ADDRESSES: Send all comments on the proposed AC to: Federal Aviation Administration, Attention: Stephen Slotte, ANM–111, Airplane & Flight Crew Interface, Federal Aviation Administration, 1601 Lind Avenue SW., Renton, WA 98055–4056; telephone (425) 227–2315; facsimile (425) 227–1320, e-mail *steve.slotte@faa.gov.*

Comments may be inspected at the above address between 7:30 a.m. and 4 p.m. weekdays, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Annette Kovite, Transport Standards Staff, at the address above, telephone (425) 227–1262.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on the proposed AC by submitting such written data, views, or arguments as they may desire. Commenters should identify AC 25.869–1 and submit comments, in duplicate, to the address specified above. All communications received on or before the closing date for comments will be considered by the FAA before issuing the final AC. The proposed AC can be found and downloaded from the Internet at *http://www.airweb.faa.gov/rgl* under ''Draft Advisory Circulars.'' A paper copy of the proposed AC may be obtained by contacting the person named above under the caption **FOR FURTHER INFORMATION CONTACT.**

Discussion

This proposed AC provides guidance for demonstrating compliance with the transport category airplane certification requirements of § 25.863 Flammable fluid fire protection (as applicable to electrical system components) and § 25.869 Fire protection: systems. The guidance provided in this proposed AC is directed to airplane manufacturers, modifiers, foreign regulatory authorities, FAA transport airplane type certification engineers, and designees. It is one means, but not the only means, of complying with the part 25 revisions proposed in Notice No. 05–08, entitled ''Enhanced Airworthiness Program for Airplane Systems/Fuel Tank Safety (EAPAS/FTS),'' published in this same edition of the **Federal Register**. Issuance of AC 25.869–1 is contingent on final adoption of the proposed revisions to part 25.

Issued in Washington, DC, on September 22, 2005.

John J. Hickey,

Director, Aircraft Certification Service.

[FR Doc. 05–19411 Filed 10–5–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Proposed Advisory Circular 25.899–1, ''Electrical Bonding and Protection Against Static Electricity''

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability and request for comments.

SUMMARY: This notice announces the availability of and requests comments on a proposed advisory circular (AC) that sets forth acceptable methods of compliance with § 25.899 concerning electrical wiring. This proposed AC complements revisions to the airworthiness standards that are being proposed by a separate notice. This notice is necessary to give all interested persons an opportunity to present their views on the proposed AC.

DATES: Comments must be received on or before December 5, 2005.

ADDRESSES: Send all comments on the proposed AC to: Federal Aviation Administration, Attention: Stephen Slotte, ANM–111, Airplane & Flight Crew Interface, Federal Aviation Administration, 1601 Lind Avenue SW., Renton, WA 98055–4056; telephone (425) 227–2315; facsimile (425) 227–1320, e-mail *steve.slotte@faa.gov.* Comments may be inspected at the above address between 7:30 a.m. and 4 p.m. weekdays, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Annette Kovite, Transport Standards Staff, at the address above, telephone (425) 227–1262.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on the proposed AC by submitting such written data, views, or arguments as they may desire. Commenters should identify AC 25.899–1 and submit comments, in duplicate, to the address specified above. All communications received on or before the closing date for comments will be considered by the FAA before issuing the final AC. The proposed AC can be found and downloaded from the Internet at *http://www.airweb.faa.gov/rgl* under ''Draft Advisory Circulars.'' A paper copy of the proposed AC may be obtained by contacting the person named above under the caption **FOR FURTHER INFORMATION CONTACT.**

Discussion

This proposed AC provides guidance for demonstrating compliance with the transport category airplane certification requirements of § 25.899 Electrical bonding and protection against static electricity. The guidance provided in this proposed AC is directed to airplane manufacturers, modifiers, foreign regulatory authorities, FAA transport airplane type certification engineers, and designees. It is one means, but not the only means, of complying with the part 25 revisions proposed in Notice No. 05–08, entitled ''Enhanced Airworthiness Program for Airplane Systems/Fuel Tank Safety (EAPAS/FTS),'' published in this same edition of the **Federal Register**. Issuance of AC 25.899–1 is contingent on final adoption of the proposed revisions to part 25.

Issued in Washington, DC, on September 22, 2005.

John J. Hickey,

Director, Aircraft Certification Service.

[FR Doc. 05–19412 Filed 10–5–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Proposed Advisory Circular 25.1353–1, ''Electrical Equipment and Installations''

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability and request for comments.

SUMMARY: This notice announces the availability of and requests comments on a proposed advisory circular (AC) that sets forth acceptable methods of compliance with § 25.1353 concerning electrical wiring. This proposed AC complements revisions to the airworthiness standards that are being proposed by a separate notice. This notice is necessary to give all interested persons an opportunity to present their views on the proposed AC.

DATES: Comments must be received on or before December 5, 2005.

ADDRESSES: Send all comments on the proposed AC to: Federal Aviation Administration, Attention: Stephen Slotte, ANM–111, Airplane & Flight Crew Interface, Federal Aviation Administration, 1601 Lind Avenue SW., Renton, WA 98055–4056; telephone (425) 227–2315; facsimile (425) 227–1320, e-mail *steve.slotte@faa.gov.* Comments may be inspected at the above address between 7:30 a.m. and 4 p.m. weekdays, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Annette Kovite, Transport Standards Staff, at the address above, telephone (425) 227–1262.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on the proposed AC by submitting such written data, views, or arguments as they may desire. Commenters should identify AC 25.1353–1 and submit comments, in duplicate, to the address specified above. All communications received on or before the closing date for comments will be considered by the FAA before issuing the final AC. The proposed AC can be found and downloaded from the Internet at *http://www.airweb.faa.gov/rgl* under ''Draft Advisory Circulars.'' A paper copy of the proposed AC may be obtained by contacting the person named above under the caption **FOR FURTHER INFORMATION CONTACT**.

Discussion

This proposed AC provides guidance for demonstrating compliance with the transport category airplane certification requirements of § 25.1353 Electrical equipment and installations. The guidance provided in this proposed AC is directed to airplane manufacturers, modifiers, foreign regulatory authorities, FAA transport airplane type certification engineers, and designees. It is one means, but not the only means, of complying with the part 25 revisions proposed in Notice No. 05–08, entitled ''Enhanced Airworthiness Program for Airplane Systems/Fuel Tank Safety (EAPAS/FTS),'' published in this same edition of the **Federal Register**. Issuance of AC 25.1353–1 is contingent on final adoption of the proposed revisions to part 25.

Issued in Washington, DC, on September 22, 2005.

John J. Hickey,

Director, Aircraft Certification Service.

[FR Doc. 05–19413 Filed 10–5–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Proposed Advisory Circular 25.1357–1X, ''Circuit Protective Devices''

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability and request for comments.

SUMMARY: This notice announces the availability of and requests comments on a proposed advisory circular (AC) that sets forth acceptable methods of compliance with § 25.1357 concerning electrical wiring. This proposed AC complements revisions to the airworthiness standards that are being proposed by a separate notice. This notice is necessary to give all interested persons an opportunity to present their views on the proposed AC.

DATES: Comments must be received on or before December 5, 2005.

ADDRESSES: Send all comments on the proposed AC to: Federal Aviation Administration, Attention: Stephen Slotte, ANM–111, Airplane & Flight Crew Interface, Federal Aviation Administration, 1601 Lind Avenue SW., Renton, WA 98055–4056; telephone (425) 227–2315; facsimile (425) 227–1320, e-mail *steve.slotte@faa.gov.* Comments may be inspected at the above address between 7:30 a.m. and 4 p.m. weekdays, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Annette Kovite, Transport Standards Staff, at the address above, telephone (425) 227–1262.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on the proposed AC by submitting such written data, views, or arguments as they may desire. Commenters should identify AC 25.1357–1X and submit comments, in duplicate, to the address specified above. All communications received on or before the closing date for comments will be considered by the FAA before issuing the final AC. The proposed AC can be found and downloaded from the Internet at *http://www.airweb.faa.gov/rgl* under ''Draft Advisory Circulars.'' A paper copy of the proposed AC may be obtained by contacting the person named above under the caption **FOR FURTHER INFORMATION CONTACT**.

Discussion

This proposed AC provides guidance for demonstrating compliance with the transport category airplane certification requirements of § 25.1357 Circuit protective devices The guidance provided in this proposed AC is directed to airplane manufacturers, modifiers, foreign regulatory authorities, FAA transport airplane type certification engineers, and designees. It is one means, but not the only means, of complying with the part 25 revisions proposed in Notice No. 05–08, entitled ''Enhanced Airworthiness Program for Airplane Systems/Fuel Tank Safety (EAPAS/FTS),'' published in this same edition of the **Federal Register**. Issuance of AC 25.1357–1X is contingent on final adoption of the proposed revisions to part 25.

Issued in Washington, DC, on September 22, 2005.

John J. Hickey,

Director, Aircraft Certification Service.

[FR Doc. 05–19414 Filed 10–5–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Proposed Advisory Circular 25.1360–1X, ''Protection Against Injury''

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability and request for comments.

SUMMARY: This notice announces the availability of and requests comments on a proposed advisory circular (AC) that sets forth acceptable methods of compliance with § 25.1360 concerning electrical wiring. This proposed AC complements revisions to the airworthiness standards that are being proposed by a separate notice. This notice is necessary to give all interested persons an opportunity to present their views on the proposed AC.

DATES: Comments must be received on or before December 5, 2005.

ADDRESSES: Send all comments on the proposed AC to: Federal Aviation Administration, Attention: Stephen Slotte, ANM–111, Airplane & Flight Crew Interface, Federal Aviation Administration, 1601 Lind Avenue SW., Renton, WA 98055–4056; telephone (425) 227–2315; facsimile (425) 227–1320, e-mail *steve.slotte@faa.gov.* Comments may be inspected at the above address between 7:30 a.m. and 4 p.m. weekdays, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Annette Kovite, Transport Standards Staff, at the address above, telephone (425) 227–1262.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on the proposed AC by submitting such written data, views, or arguments as they may desire. Commenters should identify AC 25.1360–1X and submit comments, in duplicate, to the address specified above. All communications received on or before the closing date for comments will be considered by the FAA before issuing the final AC. The proposed AC can be found and downloaded from the Internet at *http://www.airweb.faa.gov/rgl* under ''Draft Advisory Circulars.'' A paper copy of the proposed AC may be obtained by contacting the person

named above under the caption **FOR FURTHER INFORMATION CONTACT**.

Discussion

This proposed AC provides guidance for demonstrating compliance with the transport category airplane certification requirements of § 25.1360 Protection against injury. The guidance provided in this proposed AC is directed to airplane manufacturers, modifiers, foreign regulatory authorities, FAA transport airplane type certification engineers, and designees. It is one means, but not the only means, of complying with the part 25 revisions proposed in Notice No. 05–08, entitled ''Enhanced Airworthiness Program for Airplane Systems/Fuel Tank Safety (EAPAS/FTS),'' published in this same edition of the **Federal Register**. Issuance of AC 25.1360–1X is contingent on final adoption of the proposed revisions to part 25.

Issued in Washington, DC, on September 22, 2005.

John J. Hickey,

Director, Aircraft Certification Service.

[FR Doc. 05–19415 Filed 10–5–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Proposed Advisory Circular 25.1362–1X, ''Electrical Supplies for Emergency Conditions''

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability and request for comments.

SUMMARY: This notice announces the availability of and requests comments on a proposed advisory circular (AC) that sets forth acceptable methods of compliance with § 25.1362 concerning electrical wiring. This proposed AC complements revisions to the airworthiness standards that are being proposed by a separate notice. This notice is necessary to give all interested persons an opportunity to present their views on the proposed AC.

DATES: Comments must be received on or before December 5, 2005.

ADDRESSES: Send all comments on the proposed AC to: Federal Aviation Administration, Attention: Stephen Slotte, ANM–111, Airplane & Flight Crew Interface, Federal Aviation Administration, 1601 Lind Avenue SW., Renton, WA 98055–4056; telephone (425) 227–2315; facsimile (425) 227–1320, e-mail *steve.slotte@faa.gov*. Comments may be inspected at the above address between 7:30 a.m. and 4 p.m. weekdays, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Annette Kovite, Transport Standards Staff, at the address above, telephone (425) 227–1262.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on the proposed AC by submitting such written data, views, or arguments as they may desire. Commenters should identify AC 25.1362–1X and submit comments, in duplicate, to the address specified above. All communications received on or before the closing date for comments will be considered by the FAA before issuing the final AC. The proposed AC can be found and downloaded from the Internet at *http://www.airweb.faa.gov/rgl* under ''Draft Advisory Circulars.'' A paper copy of the proposed AC may be obtained by contacting the person named above under the caption **FOR FURTHER INFORMATION CONTACT**.

Discussion

This proposed AC provides guidance for demonstrating compliance with the transport category airplane certification requirements of § 25.1362 Electrical supplies for emergency conditions. The guidance provided in this proposed AC is directed to airplane manufacturers, modifiers, foreign regulatory authorities, FAA transport airplane type certification engineers, and designees. It is one means, but not the only means, of complying with the part 25 revisions proposed in Notice No. 05–08, entitled ''Enhanced Airworthiness Program for Airplane Systems/Fuel Tank Safety (EAPAS/FTS),'' published in this same edition of the **Federal Register**. Issuance of AC 25.1362–1X is contingent on final adoption of the proposed revisions to part 25.

Issued in Washington, DC, on September 22, 2005.

John J. Hickey,

Director, Aircraft Certification Service.

[FR Doc. 05–19416 Filed 10–5–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Proposed Advisory Circular 25.1365–1X, ''Electrical Appliances, Motors, and Transformers''

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability and request for comments.

SUMMARY: This notice announces the availability of and requests comments on a proposed advisory circular (AC) that sets forth acceptable methods of compliance with § 25.1365 concerning electrical wiring. This proposed AC complements revisions to the airworthiness standards that are being proposed by a separate notice. This notice is necessary to give all interested persons an opportunity to present their views on the proposed AC.

DATES: Comments must be received on or before December 5, 2005.

ADDRESSES: Send all comments on the proposed AC to: Federal Aviation Administration, Attention: Stephen Slotte, ANM–111, Airplane & Flight Crew Interface, Federal Aviation Administration, 1601 Lind Avenue SW., Renton, WA 98055–4056; telephone (425) 227–2315; facsimile (425) 227–1320, e-mail *steve.slotte@faa.gov*. Comments may be inspected at the above address between 7:30 a.m. and 4 p.m. weekdays, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Annette Kovite, Transport Standards Staff, at the address above, telephone (425) 227–1262.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on the proposed AC by submitting such written data, views, or arguments as they may desire. Commenters should identify AC 25.1365–1X and submit comments, in duplicate, to the address specified above. All communications received on or before the closing date for comments will be considered by the FAA before issuing the final AC. The proposed AC can be found and downloaded from the Internet at *http://www.airweb.faa.gov/rgl* under ''Draft Advisory Circulars.'' A paper copy of the proposed AC may be obtained by contacting the person named above under the caption **FOR FURTHER INFORMATION CONTACT**.

Discussion

This proposed AC provides guidance for demonstrating compliance with the transport category airplane certification requirements of § 25.1365 Electrical appliances, motors, and transformers. The guidance provided in this proposed AC is directed to airplane manufacturers, modifiers, foreign regulatory authorities, FAA transport airplane type certification engineers, and designees. It is one means, but not the only means, of complying with the part 25 revisions proposed in Notice No. 05–08, entitled ''Enhanced Airworthiness Program for Airplane

Systems/Fuel Tank Safety (EAPAS/FTS),'' published in this same edition of the **Federal Register**. Issuance of AC 25.1365–1X is contingent on final adoption of the proposed revisions to part 25.

Issued in Washington, DC, on September 22, 2005.

John J. Hickey,

Director, Aircraft Certification Service.

[FR Doc. 05–19417 Filed 10–5–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Proposed Advisory Circular 25–XX, Subpart I, Continued Airworthiness and Safety Improvements

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of issuance of proposed advisory circular and request for comments.

SUMMARY: The Federal Aviation Administration invites public comment on proposed Advisory Circular (AC) 25–XX, ''Subpart I, Continued Airworthiness and Safety Improvements.'' This proposed AC provides generic guidance, which is applicable to the safety initiatives in the proposed Subpart I (i.e., Enhanced Airworthiness Program for Airplane Systems, Reduction of Fuel Tank Flammability in Transport Category Airplanes, Aging Airplane Safety, and Widespread Fatigue Damage), on the roles and responsibilities of type certificate and supplemental type certificate holders, manufacturers, owners, and operators. Like all ACs, it is not regulatory but provides guidance for applicants in demonstrating compliance with the objective safety standards set forth in part 25. This notice is necessary to give all interested persons an opportunity to present their views on the proposed AC.

DATES: Comments must be received on or before December 5, 2005.

ADDRESSES: You should send your comments to the Federal Aviation Administration, Attention: Mike Zielinski, Manager, AFS Liaison Program, ANM–105, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, WA 98055–4056. You may also fax your comments to 425–227–1100, or you may send your comments electronically to: *mike.zielinski@faa.gov*. You may review all comments received at the above address between 7:30 a.m. and 4 p.m. weekdays, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mike Zielinski at the above address, telephone number 425–227–2279; fax number 425–227–1100.

SUPPLEMENTARY INFORMATION:

How Do I Obtain a Copy of the Proposed Advisory Circular?

You may obtain an electronic copy of the proposed advisory circular at the following Internet address: *http://www.airweb.faa.gov/rgl*. If you do not have access to the Internet, you may request a copy by contacting Mike Zielinski at the address or phone number listed earlier in this announcement.

How Do I Submit Comments on the Proposed Advisory Circular?

You are invited to comment on the proposed AC by submitting written comments, data, or views. You must identify the AC by title and submit your comments in duplicate to the address specified above. We will consider all comments received on or before the closing date for comments before issuing the final AC.

Discussion

By separate notices published in different issues of the **Federal Register**, the FAA proposes to amend several sections of 14 CFR part 25, and proposes to add a new Subpart I to update the regulations. The proposed AC 25–XX would provide generic guidance for demonstrating compliance with the proposed Subpart I safety initiatives. The methods and procedures described in this proposed AC are similar to those used for certification projects. This proposed AC represents one acceptable means, but not the only means, of compliance with certain aspects of the proposed Subpart I safety initiatives.

Issuance of the proposed AC is contingent on issuance of the proposed safety initiatives (i.e., Enhanced Airworthiness Program for Airplane Systems, Reduction of Fuel Tank Flammability in Transport Category Airplanes, Aging Airplane Safety, and Widespread Fatigue Damage).

Issued in Washington DC, on September 22, 2005.

John J. Hickey,

Director, Aircraft Certification Service.

[FR Doc. 05–19418 Filed 10–5–05; 8:45 am]

BILLING CODE 4910–13–P

Federal Register

Thursday,
October 6, 2005

Part III

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 589

Substances Prohibited From Use in Animal Food or Feed; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 589

[Docket No. 2002N–0273] (formerly Docket No. 02N–0273)

RIN 0910–AF46

Substances Prohibited From Use in Animal Food or Feed

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend the agency's regulations to prohibit the use of certain cattle origin materials in the food or feed of all animals. These materials include the following: The brains and spinal cords from cattle 30 months of age and older, the brains and spinal cords from cattle of any age not inspected and passed for human consumption, the entire carcass of cattle not inspected and passed for human consumption if the brains and spinal cords have not been removed, tallow that is derived from the materials prohibited by this proposed rule that contains more than 0.15 percent insoluble impurities, and mechanically separated beef that is derived from the materials prohibited by this proposed rule. These measures will further strengthen existing safeguards designed to help prevent the spread of bovine spongiform encephalopathy (BSE) in U.S. cattle.

DATES: Submit written or electronic comments by December 20, 2005. Submit written comments on the information collection provisions by November 7, 2005.

ADDRESSES: You may submit comments, identified by [Docket No. 2002N–0273 or RIN 0910–AF46], by any of the following methods:

Electronic Submissions

Submit electronic comments in the following ways:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Agency Web site: *http://www.fda.gov/dockets/ecomments*. Follow the instructions for submitting comments on the agency Web site.

Written Submissions

Submit written submissions in the following ways:

- FAX: 301–827–6870.
- Mail/Hand delivery/Courier [For paper, disk, or CD–ROM submissions]: Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

To ensure more timely processing of comments, FDA is no longer accepting comments submitted to the agency by e-mail. FDA encourages you to continue to submit electronic comments by using the Federal eRulemaking Portal or the agency Web site, as described in the Electronic Submissions portion of this paragraph.

Instructions: All submissions received must include the agency name and Docket No(s). or Regulatory Information Number (RIN) for this rulemaking. All comments received may be posted without change to *http://www.fda.gov/ohrms/dockets/default.htm*, including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the ''Comments'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to *http://www.fda.gov/ohrms/dockets/default.htm* and insert the docket number(s), found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

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I. Background

A. Bovine Spongiform Encephalopathy

BSE belongs to the family of diseases known as transmissible spongiform encephalopathies (TSEs). In addition to BSE, TSEs also include scrapie in sheep and goats, chronic wasting disease (CWD) in deer and elk, and Creutzfeldt-Jakob disease (CJD) in humans. The agent that causes BSE and other TSEs has yet to be fully characterized. The most widely accepted theory in the scientific community is that the agent is an abnormal form of a normal cellular prion protein. The abnormal form of the prion protein is less soluble and more resistant to heat degradation than the normal form. The abnormal prion does not evoke any demonstrated immune response or inflammatory reaction in host animals. BSE is diagnosed by postmortem microscopic examination of an animal's brain tissue and by detection of the abnormal form of the prion protein in an animal's brain tissue. There is currently no available test to detect the disease in a live animal.

Since November 1986, there have been more than 180,000 confirmed cases of BSE in cattle worldwide. Over 95 percent of all BSE cases have occurred in the United Kingdom, where the epidemic peaked in 1992/1993, with approximately 1,000 new cases reported

per week. In addition to the United Kingdom, the disease has been confirmed in native-born cattle in 22 European countries and in some nonEuropean countries, including Japan, Israel, Canada, and the United States.

Epidemiological studies have characterized the outbreak of BSE in the United Kingdom as a prolonged epidemic arising at various locations, with all occurrences due to a common source, and have suggested that feed contaminated by a TSE agent was the cause of the disease outbreak (Ref. 1). The subsequent spread of BSE was associated with the feeding of meat-and-bone-meal from rendered BSE-infected cattle to non-infected cattle (Ref. 1). It appears likely that the BSE agent was transmitted among cattle at an increasing rate by ruminant-to-ruminant feeding until the United Kingdom ban on such practices went into effect in 1988 (Ref. 2).

Agricultural officials in the United Kingdom have taken a series of actions to eliminate BSE. These actions include making BSE a reportable disease, banning mammalian meat-and-bone meal in feed for all food-producing animals, prohibiting the inclusion of animals more than 30 months of age in the animal and human food chains, and destroying all animals showing signs of BSE. As a result of these actions, most notably the feed bans, the rate of newly reported cases of BSE in the United Kingdom has decreased sharply and continues on a downward trend.

In 1996, a newly recognized form of the human disease CJD, referred to as variant CJD (vCJD), was reported in the United Kingdom. Scientific and epidemiological studies have linked vCJD to exposure to the BSE agent, most likely through human consumption of beef products contaminated with the agent. To date, approximately 150 probable and confirmed cases of vCJD have been reported in the United Kingdom, where there had likely been a high level of contamination of beef products. It is believed that in the United States, where measures to prevent the introduction and spread of BSE have been in place for some time, there is far less potential for human exposure to the BSE agent. The Centers for Disease Control and Prevention (CDC) leads a surveillance system for vCJD in the United States. To date, CDC, has not detected vCJD in any resident of the United States that had not lived in or traveled to the United Kingdom for extended periods of time. In 2002, a probable case of vCJD was reported in a Florida resident who had lived in the United Kingdom during the BSE epidemic. Epidemiological data indicate that the patient likely was exposed to the BSE agent before moving to the United States.

B. Current Animal Feed Safeguards in the United States

In the **Federal Register** of June 5, 1997 (62 FR 30936) (the 1997 ruminant feed final rule), FDA published a final rule to provide that animal protein derived from mammalian tissues is prohibited for use in ruminant feed. Although BSE had not been identified in the United States at that time, the 1997 ruminant feed final rule was put in place to prevent the establishment and amplification of BSE in the United States through animal feed and thereby minimize risk to humans and animals. The 1997 ruminant feed final rule created a new § 589.2000 (21 CFR 589.2000), Animal proteins prohibited in ruminant feed, and established a system of controls to ensure that ruminant feed did not contain animal protein derived from mammalian tissues. The 1997 ruminant feed final rule set out requirements for persons who manufacture, process, blend, or distribute certain animal protein products or ruminant feeds containing such products.

The 1997 ruminant feed final rule (§ 589.2000) prohibits the use of mammalian-derived proteins in ruminant feed, with the exception of certain proteins believed at that time not to pose a risk of BSE transmission. These exceptions to the definition of ''protein derived from mammalian tissues'' included: Blood and blood products; gelatin; inspected meat products which have been cooked and offered for human food and further heat processed for feed (such as plate waste and used cellulosic food casings), referred to herein as ''plate waste'' milk products (milk and milk protein); and any product whose only mammalian protein consists entirely of porcine or equine protein. The 1997 ruminant feed final rule does not prohibit ruminant animals from being fed processed animal proteins derived from nonmammalian species (e.g., avian or aquatic animals). The 1997 ruminant feed final rule permits the manufacture of non-ruminant feed containing prohibited mammalian protein and ruminant feed on the same premises, provided that separate equipment is used in the production of ruminant feed or that documented adequate clean-out procedures are used between production batches.

Following the discovery of a BSE positive cow in Washington State in December 2003, FDA provided guidance on the use of materials from BSE positive cattle. In Guidance for Industry, ''Use of Material from BSE Positive Cattle in Animal Feed,'' published in the **Federal Register** in September 2004 (69 FR 58448), FDA stated its view that under section 402(a)(5) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 342(a)(5)), animal feed and feed ingredients containing materials derived from a BSE-positive animal are considered adulterated and should be recalled or otherwise removed from the marketplace.

C. Risk of BSE in North America

In April 1998, the United States Department of Agriculture (USDA) contracted with the Harvard Center for Risk Analysis (HCRA) at Harvard University and the Center for Computational Epidemiology at Tuskegee University to conduct a comprehensive investigation of the BSE risk in the United States. The report, (Ref. 3) widely referred to as the Harvard Risk Assessment or the Harvard Study, is referred to in this document as the Harvard-Tuskegee Study. The study was completed in 2001 and released by USDA. Following a peer review of the Harvard-Tuskegee Study in 2002, the authors released a revised risk assessment in 2003 (Ref. 4).

The Harvard-Tuskegee Study reviewed available scientific information related to BSE and other TSEs, assessed pathways by which BSE could potentially occur in the United States, and identified measures that could be taken to protect human and animal health in the United States. The assessment concluded that the United States is highly resistant to any proliferation of BSE, and that measures taken by the U.S. Government and industry make the United States robust against the spread of BSE.

The Harvard-Tuskegee Study concluded that the most effective measures for reducing potential introduction and spread of BSE are as follows: (1) The ban placed by USDA's Animal and Plant Health Inspection Service on the importation of live ruminants and ruminant meat-and-bone meal from the United Kingdom since 1989 and all of Europe since 1997 and (2) the feed ban instituted in 1997 by FDA to prevent recycling of potentially infectious cattle tissue. The Harvard-Tuskegee Study further indicated that, if introduction of BSE had occurred via importation of live animals from the United Kingdom before 1989, mitigation measures already in place would have minimized exposure and begun to eliminate the disease from the cattle

population even assuming less than complete compliance with the feed ban.

The Harvard-Tuskegee Study also identified pathways or practices that, if addressed, would further decrease the already low risk of spread BSE if it were introduced into the United States. These include the following: (1) Failing to comply with FDA's ruminant feed regulations that prohibit the use of certain proteins in feed for cattle and other ruminants; and (2) rendering of animals that die on the farm (considered the highest risk cattle), and then incorporating (through illegal diversion or cross-contamination) the rendered product in ruminant feed. The Harvard-Tuskegee Study's independent evaluation of the potential additional risk mitigation measures predicts that a prohibition against rendering of animals that die on the farm would reduce potential new cases of BSE in cattle following a hypothetical introduction of 10 infected animals by 80 percent (from 4.3 to 0.77 cases) as compared to the base case scenario, (i.e., present state of the U.S. cattle population, along with government regulations and prevailing agricultural practices, and an assumption of less than complete compliance with the feed ban) (Ref. 4). Further, the study evaluated the impact of a specified risk materials (SRMs) ban that would prohibit high risk materials such as the brain, spinal cord, vertebral column and animals that die on the farm, from inclusion in human and animal food. The analysis predicts that this measure would reduce potential new BSE cases in cattle following a hypothetical introduction of ten infected animals by 90 percent (from 4.3 to 0.53 cases).

In 2003, following the detection of BSE in a native-born cow in Canada, the HCRA evaluated the implications of a then-hypothetical introduction of BSE into the United States (Ref. 5), using the same simulation model developed for the initial Harvard-Tuskegee Study. The results of this assessment were consistent with the conclusions of the earlier study—namely, that the United States presents a very low risk of establishing or spreading BSE should it be introduced.

On December 23, 2003, USDA announced that a dairy cow in Washington State had tested positive for BSE. The results were confirmed on December 25, 2003, by the Veterinary Laboratories Agency in Weybridge, England. Immediately after the diagnosis was confirmed, USDA, FDA, and other Federal and State agencies initiated an epidemiological investigation (Ref. 6), and began working together to trace any potentially infected cattle, trace potentially contaminated rendered product, increase BSE surveillance, and take additional measures to address risks to human and animal health. The epidemiological investigation and DNA test results confirmed that the infected cow was born and most likely became infected in Alberta, Canada, before Canada's 1997 implementation of a ban on feeding mammalian protein to ruminants.

On January 22 through 24, 2004, the Secretary of Agriculture convened an international panel of experts on BSE. The panel, referred to as the International Review Team (IRT), was asked to: (1) Assess the epidemiological investigation conducted in response to the BSE case in Washington State, (2) provide expert opinion about when the active phase of the investigation should be terminated, (3) consider the response actions of the United States to date, and (4) provide recommendations about actions that could be taken to provide additional meaningful human or animal health benefits in light of the North American experience. The IRT provided its report on February 4, 2004.

In May 2004, USDA contracted with HCRA to update the BSE risk assessment model to reflect its January 2004 rulemaking to prohibit SRMs and certain other cattle material in human food. HCRA was also asked to update the parameters in the model for compliance with FDA's feed ban. HCRA was also asked to model the impact that the IRT recommendation would have on the BSE risk to humans and cattle.

In December 2004, Canada announced that a third North American cow tested positive for BSE. An ongoing epidemiologic investigation found that this animal, an 8-year-old, nonambulatory dairy cow, originated in Alberta, Canada and was born before the Canadian feed ban went into effect in August 1997. Shortly thereafter, in January 2005, another cow in Alberta was found to be positive for BSE. This case involved a beef cow born in March 1998, 6 months after the Canadian feed ban went into effect. Based on preliminary information, Canada believes that the most likely source of infection in this animal was feed produced before implementation of Canada's feed ban (Ref. 7).

In June 2005, USDA announced that a 12-year-old beef cow, born and raised in Texas, was confirmed BSE positive. The BSE-positive cow most likely became infected before FDA's implementation of the 1997 ruminant feed final rule. It was determined that no part of the animal entered the human food or animal feed chains.

D. Additional Measures Considered to Strengthen Animal Feed Safeguards

1. Comments on November 6, 2002, Advance Notice of Proposed Rulemaking (ANPRM)

In the **Federal Register** of October 5, 2001 (66 FR 50929), FDA announced its plan for an October 30, 2001 public hearing in Kansas City, MO, to solicit comments from the public on the 1997 ruminant feed regulation. Recognizing that new information had emerged since publication of the feed rule in 1997, FDA requested comments on whether changes to the rule or other additional measures were necessary (Ref. 8). Information obtained from the public hearing and from the Harvard-Tuskegee Study was used in the publication of an ANPRM (2002 ANPRM) in the **Federal Register** of November 6, 2002 (67 FR 67572). This ANPRM sought comment from affected industries and the public on possible ways to strengthen the 1997 ruminant feed regulation. The ANPRM specifically asked for comments on a number of questions related to the following five aspects of the BSE feed regulation: (1) Excluding brain and spinal cord from rendered animal products, (2) prohibiting the use of poultry litter in cattle feed, (3) assessing the improper use of pet food as a feed for ruminants, (4) preventing cross-contamination, and (5) eliminating the plate waste exemption.

The predominant view of those who submitted comments in response to the ANPRM was that the BSE risk in the United States was low enough that no new feed controls were needed. Most said that the current feed ban provided more than adequate protection against BSE, that there was no scientific justification for additional regulations, that compliance with the 1997 ruminant feed final rule was extremely high, and that over 19,900 USDA surveillance samples in 2002 alone failed to detect BSE in U.S. cattle. They also cited the Harvard-Tuskegee Study conclusion that existing control measures made the risk to U.S. cattle and to U.S. consumers from BSE very low.

In the 2002 ANPRM, FDA said that the Harvard-Tuskegee Study identified the removal of high-risk bovine tissues, such as brain, spinal cord, intestine, and eyes, from human food and from rendered material for all animal feed as a way to reduce the potential exposure of cattle and humans to the BSE agent. The 2002 ANPRM then asked for comments on the following three questions related to SRMs: (1) Should high risk materials be excluded from rendered products?; (2) how feasible would it be for the rendering industry

to implement such an exclusion?; and (3) what will be the adverse and positive economic, environmental, and health impacts from an exclusion?

Comments in support of an SRM ban included one comment from USDA citing conclusions from the Harvard-Tuskegee Study that this action would significantly reduce the amount of infectivity in the animal feed chain, and would reduce risks resulting from ''leaks'' in the feed ban. Other comments stressed the infectivity of these tissues, and the recommendation by the World Health Organization (WHO) that countries exclude these tissues from the animal and human food chain (Ref. 9).

Comments opposing an SRM ban said that the measure would be redundant because the 1997 ruminant feed final rule already prohibits this high-risk material in ruminant feed. Therefore, the ban would only be beneficial if BSE were present in the United States and there were significant non-compliance with the feed ban. The comments also cited the conclusions of the Harvard-Tuskegee Study that the risks of BSE in the United States are low. One comment said that restrictions on SRMs in animal feed should be decoupled from restrictions for human food because of the substantial reduction in infectivity obtained during rendering. Another comment said that an SRM ban would give only the perception of a risk reduction, not a real reduction, and that it would send the message to our trading partners that our BSE risks are such that more controls are needed. Australia asked that, if an SRM ban is implemented, the ban not apply to Australia because of its widely recognized status as a low-risk BSE country.

Numerous comments addressed the feasibility and the adverse economic impacts of an SRM ban. One comment pointed out that it is not feasible to remove central nervous system (CNS) tissue from decomposing carcasses. Comments from a trade association said that an SRM ban would require costly restructuring of facilities that would force many small rendering plants out of business, depriving some parts of the country access to rendering as a means of animal disposal. A June 2002 Sparks Report estimated disposal costs of an SRM ban to be $54 million, based on the assumption that the ban would apply to all cattle because of the difficulty of determining the age of cattle at slaughter (Ref. 10). According to an earlier 1996 Sparks Report, the cost of disposal of 1.7 billion pounds of CNS tissue and dead stock would exceed $400 million. Another estimate for disposal was $50 million for the beef industry alone. One comment said that feed costs account for 70 percent of poultry production cost, and that renderers would pass on the costs of excluding brains and spinal cords to the poultry industry.

Several comments mentioned the environmental impact of an SRM ban. One comment stated that a total ban on SRMs in rendered animal products would create a waste stream with no economic value. Another comment said that a ban on SRMs would encourage improper disposal of dead stock because there are no federal regulations on disposal of dead animals.

2. Actions in Response to Washington State Case

In response to the BSE case identified in Washington State, USDA published an interim final rule in the **Federal Register** of January 12, 2004 (69 FR 1861), excluding high-risk tissues from human food. The interim final rule prohibited the use of SRMs and certain other cattle material in USDA-regulated human food. USDA defined SRMs as brain, skull, eyes, trigeminal ganglia, spinal cord, vertebral column (excluding the vertebra of the tail, the transverse processes of the thoracic and lumbar vertebrae, and the wings of the sacrum), and dorsal root ganglia (DRG) of cattle 30 months of age and older, and the tonsils and distal ileum of the small intestine of cattle of all ages. To ensure effective removal of the distal ileum, USDA requires that the entire small intestine be removed and disposed of as inedible product. In its January 12, 2004, interim final rule, USDA took the additional step of making cattle that are unable to rise from a recumbent position, referred to in this document as nonambulatory disabled cattle, ineligible to be slaughtered for human consumption.

On January 26, 2004, FDA announced its intention to implement additional measures to strengthen existing BSE safeguards for FDA-regulated products. These measures included the issuance of an interim final rule to implement additional measures related to animal feed. The interim final rule would have implemented four specific measures related to animal feeds. These measures included the elimination of the exemptions for blood and blood products and ''plate waste'' from the 1997 ruminant feed rule, a prohibition on the use of poultry litter in ruminant feed, and a requirement for dedicated equipment and facilities to prevent cross-contamination.

However, on February 4, 2004, IRT released its report on measures related to BSE in the United States. The report recommendations included a somewhat different set of measures for reducing the risks associated with animal feed than the measures FDA had announced that it intended to implement through an interim final rule. Although FDA believed its previously announced measures would serve to reduce the already small risk of BSE spread through animal feed, the broader measures recommended by the IRT, if implemented, could make some of the previously announced measures unnecessary. FDA believed that additional information was needed to determine the best course of action in light of the IRT recommendations and decided to publish an ANPRM, which requested comments on the recommendations of the IRT, as well as on other measures under consideration to protect the animal feed supply.

Consistent with measures implemented by USDA to exclude high-risk cattle tissues from human food (69 FR 1861), FDA published an interim final rule on July 14, 2004 (69 FR 42255), prohibiting a similar list of risk materials from FDA-regulated human food, including dietary supplements, and cosmetics.

3. Comments on July 14, 2004, ANPRM

In the **Federal Register** of July 14, 2004 (69 FR 42287), FDA published an ANPRM (2004 ANPRM) jointly with USDA in which FDA announced its tentative conclusion that it should propose banning SRMs in all animal feed. In this ANPRM, FDA asked for comment on this measure and also on the IRT's recommendations to require dedicated equipment or facilities for feed manufacture and transport, and its recommendation to prohibit the use of all mammalian and poultry protein in ruminant feed. Finally, FDA also asked for comment on the set of measures that the agency had announced in January 2004. Comments submitted in response to the 2004 ANPRM that relate to SRMs are summarized in sections I.D.3a through I.D.3f by general topic area.

a. *Need for SRM ban.* As with the comments received in response to the 2002 ANPRM, many comments questioned the need for an SRM ban at the time of the 2004 ANPRM. Several comments argued that the comparison made by the IRT between the BSE situations in Europe and the United States is inappropriate. One reason given for the invalid comparison was that there were an estimated 3 to 4 million undiagnosed BSE cases in the United Kingdom, compared to two diagnosed cases in North America in cattle born before feed restrictions were implemented. Another comment said

that the United States did, in fact, learn from the European experience and implemented controls early so that potential animal exposure to the BSE agent in the United States remains exceedingly small compared to the massive exposure in the United Kingdom. One comment submitted by the agriculture department of a state with a large agriculture industry said that its findings from 600 inspections do not support the premise of the IRT's recommendation that an SRM ban is needed to address problems of cross-contamination and on-farm misfeeding. The state indicated that, in these inspections, it did not observe any prohibited materials or feed containing prohibited materials on farms where ruminant feeds were being mixed.

Other comments said that the reduction in risk obtained through an SRM ban would be minimal, mostly citing the effectiveness of the current firewalls in reducing BSE infectivity in the cattle population. One comment said that the Harvard-Tuskegee Study conclusion that an SRM ban will reduce potential cattle exposure to BSE infectivity by 88 percent sounds more impressive than it really is. Reducing a very small risk by 88 percent does not necessarily provide significant risk reduction.

Finally, many comments questioned FDA's decision to ban SRMs from animal feed before the results of USDA's enhanced BSE surveillance program are known. USDA's one-time effort to test as many high-risk cattle as possible was started on June 1, 2004, and was expected to be completed by the end of 2005. One comment pointed out that the IRT's recommendations for defining SRMs are predicated on the outcome of this aggressive surveillance program.

In support of FDA's tentative conclusion that it should propose to ban SRMs from all animal feed, many comments cited the conclusion of the Harvard-Tuskegee Study that an SRM ban will provide additional risk reduction, and also cited the recommendation of the IRT that SRMs should be excluded from all animal feed, including pet food. One comment said that an SRM ban would restore confidence in U.S. beef exports.

b. *Definition of SRMs*. SRMs are typically defined as the tissues in which BSE infectivity has been demonstrated in experimentally or naturally infected animals. SRMs are further defined by the OIE Terrestrial Animal Health Code based on the age of the animal and the BSE risk status of a country. In the 2004 ANPRM, FDA asked how SRMs should be defined for animal feed, specifically, if the SRM list should be the same list as for human food. FDA also asked what information is available to support having two different lists.

Comments from one organization included data from the Harvard-Tuskegee Report on the relative infectivity of specific tissues. These data were based on pathogenesis studies carried out in the United Kingdom and showed the fraction of total infectivity of each tissue to be: Brain 64.1 percent; spinal cord 25.6 percent; dorsal root ganglia 3.8 percent; trigeminal ganglia 2.6 percent; distal ileum 3.3 percent; tonsil <0.1 percent; and eyes <0.1 percent. The comment used the data to make the point that 90 percent of infectivity could be removed by excluding only the brain and spinal cord. A different comment citing the same data pointed out that the infectivity distribution represents more than a worst case scenario because, in the pathogenesis study, the BSE dose administered orally to calves was substantially greater than would reasonably be expected under field conditions. This second comment went on to point out that FDA's interim final rule on food and cosmetics said that in cattle infected under field conditions, BSE infectivity had been demonstrated only in the brain, spinal cord, and retina of the eye at the end stages of the disease.

Many comments recommended that the human food list of SRMs be used to define which SRMs should be excluded from animal feed. Several comments recommended expanding the list beyond the human food list by applying it to tissues from cattle 12 months of age or older, or to tissues from all cattle. Others advocated eliminating bovine or animal protein from ruminant feed altogether. Reasons given by the comments for these recommendations were the large risk reduction that could be achieved and the desirability of being consistent with the requirements for human food.

Those who submitted comments in support of a more limited SRM list mostly did so to minimize the volume of material that would require nonfeed disposal. The comments stated that reducing this volume of material that would require nonfeed disposal would lessen the adverse impact of an SRM ban on the livestock, meat, and animal feed industries. One company used the Harvard model to simulate three different SRM scenarios and then submitted data showing that limiting the SRM list to brain and spinal cord (while also prohibiting use of dead stock and downers over 30 months of age), eliminating vacuum rendering, and keeping the existing feed ban in place, achieved a risk reduction equivalent to that obtained by banning the full human list of SRMs.

The following are other suggestions provided in comments submitted in response to the 2004 ANPRM for reducing the volume of SRM material needing alternative disposal: (1) Allow the use of SRMs from animals that test negative for BSE, (2) designate only the head as an SRM which reduces by 64 percent the potential BSE infectivity in feed, (3) allow the use of intestines from veal calves whose carefully controlled diets consist of low-risk formulas, and (4) allow mechanically separated beef from pet food plants to be used if SRMs are removed before meat is mechanically separated from bones.

c. *Cattle not inspected and passed for human consumption*. The term ''cattle not inspected and passed for human consumption'' is used in this document to mean cattle that were not inspected and passed for human consumption by the appropriate regulatory authority. For the purposes of this document, this term also includes nonambulatory disabled cattle, i.e., cattle that could not rise from a recumbent position or that could not walk, including, but not limited to, those with broken appendages, severed tendons or ligaments, nerve paralysis, fractured vertebral column, or metabolic conditions. This proposed definition is consistent with the use of the terms ''inspected and passed and nonambulatory disabled cattle'' as defined in USDA's interim final rule on human food (69 FR 1862) and FDA's interim final rule on human food and cosmetics (69 FR 42255). For the purposes of this proposed rule, nonambulatory disabled cattle are included in the definition of cattle not inspected and passed, since nonambulatory disabled cattle cannot be passed for human consumption.

A number of questions were included in the 2004 ANPRM regarding the use of materials from cattle not inspected and passed for human consumption as previously defined. Comments received discussed both the advantages and disadvantages of excluding these animals from being rendered for use in animal feed.

Advantages mentioned included the additional risk reduction that would be provided by the measure. A number of comments cited the Harvard-Tuskegee Study, which showed that removing dead stock from the feed chain would reduce potential exposure of cattle to the BSE agent by 88 percent. However, other comments noted that such a ban would result in dead stock being disposed of on the farm, impacting USDA's surveillance program and

increasing environmental problems due to improper disposal of animal carcasses. Concerns were also expressed about lack of infrastructure for non-feed disposal of dead stock, and the serious economic impact of diverting these animals to alternative disposal.

In response to the question in the 2004 ANPRM about effective removal of SRMs from dead stock and nonambulatory disabled cattle, several comments stated that such removal would not be economically or technically feasible. Other comments stated that SRM material could be effectively removed because there is no substantial difference between the processing of dead and nonambulatory animals at rendering facilities and the processing of healthy cattle at slaughter plants. One other comment mentioned instances where some USDA-inspected deboning facilities already remove SRMs from dead cattle at the request of pet food manufacturers. This comment also said that, based on their experience, SRMs can be removed from dead cattle in all but the hottest months of the year when the rate of decomposition increases. Another comment said that removing SRMs from dead stock may increase exposure of plant employees to pathogens and zoonotic diseases.

One comment noted that the European experience has shown that cattle at highest risk for BSE are dead cattle, downer cattle, and ante-mortem condemned cattle over 30 months of age. This comment said that, while it is possible to remove the meat from these carcasses for use in pet food, they are not aware of any way of verifying the removal of SRMs from dead and nonambulatory cattle (short of active government oversight) that would allow this material to be rendered for use in feeds for non-ruminant animals. Another comment suggested that as an option for reducing the amount of material for disposal, dead stock under 30 months of age be allowed to be rendered for feed use. This comment also said that USDA could test dead stock over 30 months of age, allowing material from negative animals to be used in feed.

d. *Small intestine*. The 2004 ANPRM also requested information to evaluate the IRT recommendation that the entire intestine from cattle of all ages should be excluded from the human and animal food chains. With publication of its interim final rule on January 12, 2004, USDA required that the entire small intestine be disposed of as inedible. Likewise, FDA prohibited the use of the entire small intestine in FDA-regulated human food and cosmetics, even though the agency only considers the distal ileum portion of the small intestine to be a specified risk material (69 FR 42259).

However, based on comments received in response to the FDA interim final rule on human food and cosmetics, FDA concluded that processors have the technology to effectively remove the distal ileum portion from the rest of the small intestine. Thus, FDA amended the human food and cosmetics interim final rule to state that the small intestine is not considered prohibited cattle material if the distal ileum is removed by a procedure that removes at least 80 inches of the uncoiled and trimmed small intestine as measured from the caeco-colic junction and progressing proximally towards the jejunum or by a procedure that the establishment can demonstrate is equally effective in ensuring complete removal of the distal ileum (70 FR 53063, September 7, 2005). This amendment is consistent with USDA requirements (70 FR 53043, September 7, 2005).

Many comments in response to the 2004 ANPRM stated that inclusion of the entire small intestine from cattle less than 30 months of age in the list of prohibited material would double the volume of SRMs from slaughter requiring alternative disposal while only marginally decreasing infectivity. Several comments stated that only the distal ileum should be included in the list of SRMs and noted that it is easily identified for separation at slaughter.

One comment questioned the need to designate the intestinal tract as SRM, pointing out that the distal ileum accounts for only 5 percent of infectivity, which is reduced by two logs during rendering. Another comment said that it was unnecessary to designate any portion of the intestinal tract of cattle less than 30 months of age as SRM because these animals were born 4 1/2 years after the feed ban was implemented, and are therefore low risk animals. Several comments said that, if packers can demonstrate a satisfactory technique, they should be allowed to remove only the distal ileum rather than the entire small intestine.

One comment expressing concern about the BSE risk associated with bovine intestines said that research in the United Kingdom found positive immunostaining for the resistant form of the prion protein along the length of the intestine, which provides evidence that the entire intestine should be considered SRM.

e. *Infrastructure for alternative disposal*. We received a number of comments addressing the issue of disposal infrastructure. One comment noted that the IRT recognized that an infrastructure was not in place to dispose of SRM material and that the IRT had suggested that a staged implementation may be necessary to allow this infrastructure to develop. One comment said that before an SRM ban is implemented a comprehensive plan for disposal of this material needs to be developed. Another comment noted that in Texas, SRMs are considered special waste, and that no landfill in the state is capable of accommodating a large volume of this material. Additional comments indicated that this concern was also true for other states, including Nebraska and Utah.

Two organizations submitted slaughter and cattle mortality data to emphasize the amount of waste that would be generated by regulations that would exclude this material from being rendered for use in animal feed. One of these organizations said that it is deeply concerned that FDA fails to recognize that a suitable disposal infrastructure does not exist to deal with the very large quantities of SRMs that would be generated on a daily basis. Its estimate for the volume of waste generated from slaughter and cattle mortalities was 2 billion pounds per year. The other organization submitted similar comments saying that the U.S. system is currently unprepared to manage the waste disposal challenges certain to arise if significant quantities of livestock mortalities and slaughter byproducts require disposal by means other than rendering. The comments further stated that the disposal and environmental challenges resulting from the ban would be faced immediately, but the solutions to these challenges would arise only after significant time and financial investment across the livestock sector. The comments also said that there is an absence of direct regulatory control over alternative methods of disposing of the enormous quantities of this unpleasant material.

Another comment suggested that renderers should be allowed to dedicate lines to SRM material and SRM-free material within a single facility. Equipment for receiving, grinding, cooking, processing, and conveying could be dedicated lines, while the facility itself, including the utilities, odor control, and wastewater treatment systems be shared. Further, another comment suggested FDA work with the rendering industry to develop cleanout procedures that would allow a plant to process both SRMs and SRM-free material. These procedures would be helpful to allow for seasonal deer rendering, for cleaning up after accidental cross-contamination, and for

converting a facility back to SRM-free rendering.

One comment addressed the use of rendered SRM material as an alternative fuel source for cement kilns, indicating that ruminant meat and bone meal and fat are being used as a fuel source in Europe and Japan. According to the comment, these materials burn efficiently, and the heat from the kiln leaves virtually no organic residue.

f. *Verification of SRM removal and SRM marking.* One comment stated that, in the absence of a practical test for verification of SRM removal, the documentation required by HACCP plans should be sufficient to show that SRMs at slaughter are excluded from animal feed channels. Thus, inspections of records could be used to verify SRM removal. Also, the comment stated that FDA can verify SRM removal by shifting resources from inspections of thousands of feed mills and farms to the much smaller number of slaughter plants and renderers.

One comment stated that rendering plants are capable of keeping raw materials from various sources separated and capable of using production, inventory, and shipping records to document the movement of both SRM and SRM-free materials. Such management practices can be verified by inspection, much like those conducted at USDA-inspected cattle slaughter facilities. The comment went on to say that, if a rendering plant is dedicated to rendering only SRMs, such a plant will have to be inspected to determine how it disposes of SRMs.

Two comments suggested that raw or SRM-derived rendered materials can be effectively marked using automatic dosage pumps to dispense markers like glyceroltriheptanoate (GTH). GTH is a C7 synthetic fatty acid not found in nature. A gas chromatography (GC) method for its detection is available. Charcoal was mentioned as another potential marker for use in rendered products.

II. Proposed Measures to Strengthen Animal Feed Safeguards

A. FDA Response to Comments to the 2004 ANPRM

FDA agrees with the numerous comments saying that it is important to keep the BSE risk in the United States in proper perspective. FDA acknowledges that the risk is likely low, and acknowledges that it is inappropriate to compare the BSE situation in the United States to the situation in Europe. However, FDA disagrees with comments concluding that for these reasons no additional measures are needed. Even though strong control measures have been put in place and compliance with the current BSE feed regulation is high by renderers, protein blenders and feed mills, the Agency is concerned, as discussed further below, about such issues as the presence of high risk material in the non-ruminant feed supply and cross-contamination of ruminant feed during the rendering or feed manufacturing process. For example, without fully dedicated equipment, it may not be possible to verify that there is zero carryover of feed or feed ingredients in equipment, even where a firm's cleanout procedures have been judged to be adequate. In addition, resource constraints limit FDA's ability to assure full compliance by all segments of the industry that are subject to the current BSE feed regulation. For example, resources are not available to the FDA and its state counterparts to fully verify compliance on over 1 million farms where cattle are being fed.

FDA does not agree with comments that the agency should wait until USDA completes its enhanced BSE surveillance program before deciding if additional feed controls are needed. As stated in the July 2004 ANPRM, FDA had tentatively decided based on clear evidence that the BSE agent had been introduced into the North American animal feed supply, and based on the recommendation of the IRT, that SRMs should be removed from all animal feed. Results from the enhanced surveillance that was being conducted concurrent with our rulemaking process indicated that BSE had been introduced into the United States, but was present at a very low level. These results reinforced FDA's decision that the measures being proposed are appropriate.

With respect to the definition of SRMs, FDA agrees that prohibiting the full list of SRMs would achieve greater risk reduction than prohibiting a partial list, but also agrees with comments saying that the infrastructure does not currently exist to handle the volume of material that would require non-feed disposal if the full list of SRMs were diverted from animal feed use. Therefore, FDA agrees that focusing on brain and spinal cord is an effective approach for achieving additional animal and public health protection while minimizing the economic, environmental, and public health concerns associated with disposal of the full list of SRMs. FDA, however, seeks comments on whether a full SRM ban is warranted.

Comments were mixed on the feasibility of removing SRMs from dead stock. FDA therefore concluded that some firms would elect to remove SRMs and render the remainder of the carcass, and that this could lessen difficulties associated with alternative disposal. FDA does not agree that allowing test-negative animals to be rendered for animal feed use is appropriate. Unlike Europe, rapid screening tests in the United States have been used only for surveillance purposes. These tests have not been used as food or feed safety tests because currently available tests can detect BSE only in the late stages of disease. Finally, although FDA agrees that vacuum rendering is less effective at inactivating TSEs than atmospheric rendering, the Agency disagrees that vacuum rendering should be prohibited. Modeling results submitted with the comment showed that such a prohibition would result in an additional one percent reduction in risk. In light of other measures being proposed and the fact that few plants use vacuum rendering, FDA does not believe that prohibiting this rendering process would appreciably improve animal or public health protection.

B. Additional Measures to Further Strengthen Feed Protection

The United States and Canadian feed regulations implemented in 1997 were necessary because of uncertainty about whether BSE infectivity had already been introduced into North America before new import restrictions on live cattle and meat and bone meal from Europe were put in place. It is now clear from the five North American BSE cases that the BSE agent was introduced into the North American animal feed supply at some point in time. While FDA continues to believe that compliance with the feed regulation has provided strong protection against the spread of BSE, the agency believes that the recent cases are an indication that additional animal feed protections are needed to remove residual infectivity that may be present in the animal feed supply. FDA also believes that of all the options considered since publication of the 2002 ANPRM, excluding the highest risk tissues from all animal feed is the best approach to address the risks of BSE in the United States. In the 2004 ANPRM, FDA announced its tentative conclusion that it should propose a prohibition on the use of SRMs in all animal feed.

The decision to propose banning SRMs from all animal feed led to the following questions: (1) Which material to exclude, (2) what alternative disposal methods could be used, (3) what the economic and environmental impacts of diverting material to alternative disposal would be, and (4) how an SRM ban could be enforced. As the IRT reported,

exclusion of large volumes of raw material is a massive burden for all countries affected by BSE. FDA received valuable information pertaining to these issues in comments submitted in response to the 2004 ANPRM.

In reaching a decision about what specific additional measures should be proposed at this time, FDA considered the magnitude of the BSE risk in the United States. While the recent North American cases clearly show the BSE agent was introduced, the USDA enhanced BSE surveillance program indicates that the prevalence of the disease in the United States is very low. As of July 2005, USDA has tested over 418,000 high-risk cattle under its enhanced BSE surveillance program (Ref. 11), and has found one positive animal in addition to the cow identified in Washington State in December 2003. Therefore, FDA believes that the additional measures being proposed are appropriate at this time. The agency proposes to prohibit from use in all animal feed the brains and spinal cords from cattle 30 months of age and older, the brains and spinal cords from all cattle not inspected and passed for human consumption, and the entire carcass of cattle not inspected and passed for human consumption from which brains and spinal cords were not removed. The agency also proposes to prohibit from use in all animal feed mechanically separated beef and tallow that are derived from materials prohibited by the rule. However, the rule proposes to exempt tallow from this requirement if it contains no more than 0.15 percent insoluble impurities.

C. Basis for Proposing to Apply Additional Measures to All Animal Food and Feed

The current U.S. ruminant feed regulation prohibits the use of certain mammalian-origin proteins in ruminant feed, but allows the use of these materials in feed for non-ruminant species. FDA believes that the presence of high-risk materials in the non-ruminant feed supply presents a potential risk of BSE to cattle in the United States. European experience showed that, in countries with high levels of circulating BSE infectivity, controls on only ruminant feed were not sufficient to prevent further transmission of BSE. Until SRMs were removed from all animal feed, a significant number of new cases continued to be found in cattle born in the United Kingdom after implementation of a ruminant-to-ruminant feed ban (Ref. 12). These new cases were attributed to either cross-contamination during feed manufacture and transport, or to intentional or unintentional misfeeding on the farm.

The 1997 ruminant feed regulation requires feed manufacturers and distributors that handle both ruminant feed and feed ingredients and materials prohibited in ruminant feed to control cross-contamination by either: (1) Maintaining separate equipment or facilities or (2) using adequate clean-out procedures or other means adequate to prevent carry-over of prohibited material into feed for ruminant animals. FDA has been concerned about the adequacy of such clean-out procedures and sought public comment on this issue in the 2002 ANPRM. Although many firms using the clean-out option have written procedures in place, evaluating their adequacy is difficult because of wide variation in equipment and practices used by the feed industry, and because there is currently no definitive test method to detect prohibited proteins.

Further increasing FDA's concerns about cross-contamination are preliminary data from an unpublished study showing that the minimum infectious dose for BSE may be lower than previously thought. Interim results at approximately 5 years post exposure of an oral challenge experiment have demonstrated transmission of BSE to 1 out of 15 animals that received 0.01 gram of brain tissue from a BSE-infected animal (Ref. 13). The lowest dose previously tested was 1.0 gram of brain tissue which showed transmission of BSE in 7 out of 10 animals in the trial group. This finding of a lower minimum infectious dose for BSE would suggest that the risk from cross-contamination is greater than previously thought. We seek comment on this interpretation of theses interim results.

Instances of cattle being exposed to prohibited material through noncompliance with the 1997 feed bans have been identified in both Canada and the United States. The investigation by the Canadian Food Inspection Agency of the BSE case identified in May 2003 found several instances where cattle might have had access to non-ruminant feed containing prohibited material. In the United States, FDA inspections have identified situations where cattle could have been exposed to material prohibited in ruminant feed as a result of ruminant feed being contaminated with non-ruminant feed, or non-ruminant feed not being properly labeled.

In fiscal year 2004 and the first half of fiscal year 2005, federal and state inspections identified 41 instances (0.4 percent of inspections) of cross-contamination or commingling problems in firms that handle animal feeds containing prohibited mammalian protein (Ref. 14). During this same period, inspections identified 165 instances (1.7 percent of inspections) in which non-ruminant feeds containing prohibited material were not properly labeled with the caution statement ''Do Not Feed to Cattle or Other Ruminants''. Firms receiving mislabeled feed would not be aware of the need to take steps to prevent cross-contamination of ruminant feed with such products. Furthermore, inspections during this period identified 604 instances (6.3 percent of inspections) in which firms handling animal feeds containing prohibited mammalian protein did not meet the recordkeeping requirements. These instances involved a variety of recordkeeping deficiencies, including not maintaining sales records for feeds received or distributed, not establishing written protocols for avoiding commingling, and not fully documenting clean-out measures utilized. Such deficiencies are typically corrected by the involved firms without further action by the agency. However, the occurrence of these deficiencies nonetheless supports the need for additional measures to address concerns about the presence of high-risk materials in the non-ruminant feed supply. Without sales records, it is difficult to verify the source of feed or feed ingredients or to track distributed feeds when conducting recalls in response to known instances of product contamination. Without appropriate documentation of procedures related to commingling or cross-contamination, it is difficult to verify that workers are informed of such procedures or that the procedures are adequate.

FDA has issued warning and untitled letters to firms addressing noncompliance with the current ruminant feed ban regulation and a feed manufacturer has been permanently enjoined in connection with noncompliance with the current feed ban regulation.

FDA is also concerned about intentional and unintentional misfeeding of non-ruminant feed to ruminants on the farm. Financial incentives for intentional misfeeding could occur any time inexpensive sources of prohibited protein are locally available to the feeder. The use of salvaged pet food that contains ruminant meat and bone meal is an example. There may be other incentives to intentionally feed non-ruminant feed to cattle. For example, the Florida Department of Agriculture and Consumer Services issued a statement cautioning against the misuse of pet

food as feed for show cattle as a way to increase the shine in the cattle coat (Ref. 15). Unintentional feeding could occur on the farm from feeding ruminants and non-ruminant in close proximity to each other. If intentional or unintentional uses occur, this proposed rule would protect cattle by removing the highest risk material from the non-ruminant feed being used in cattle feed. Assuring that misfeeding does not occur on the farm is particularly difficult due to the large number of cattle feeding operations in the United States, and FDA's extremely limited resources to inspect these operations, which number over 1 million.

Therefore, although overall compliance with the 1997 ruminant feed rule has been high for renderers, protein blenders, and feed mills, removal of the highest risk tissues from animal feed channels should serve to address noncompliance with the rule that could result in cattle exposure to prohibited material through cross-contamination, mislabeling, or intentional or unintentional misfeeding.

D. Cattle Materials Proposed to be Prohibited From Use in All Animal Food and Feed

1. Brain and Spinal Cord From Cattle 30 months of Age and Older

The USDA interim final rule published on January 12, 2004, provides a full description of the scientific rationale for identifying the list of tissues and selection of the 30-month age criterion used in its definition of SRMs. FDA has adopted an identical definition of SRMs in its interim final rule regarding FDA-regulated human food and cosmetics. In the preamble of its July 14, 2004 interim final rule regarding human food, including dietary supplements, and cosmetics, FDA includes a detailed discussion of its rationale for the SRM definition. As discussed in the preamble to the USDA and FDA interim final rules, infectivity is not present in most tissues that harbor BSE infectivity until more than 30 months after the animal was exposed to the agent. Although the epidemiological and experimental data indicate that BSE can develop in animals less than 30 months of age, the evidence available to date indicates that this was a very rare occurrence, and was associated with high levels of circulating infectivity at the peak of the BSE epidemic in the United Kingdom. The agency continues to believe that the rationale for the 30-month age criterion described previously for human food and cosmetics is appropriate and proposes that it be applied to animal feed as well.

In response to a question posed in the 2004 ANPRM as to which tissues should be defined as SRMs for animal feed, FDA received suggestions ranging from defining all animal protein as SRMs to limiting the SRM definition to the head only. FDA considered prohibiting from animal feed the same materials defined as SRMs that are currently prohibited from use in food for humans, but decided that proposing to require the removal of brain and spinal cord is the most appropriate approach at this time.

In reaching the decision to propose to exclude only the brain and spinal cord from animal feed, FDA considered information regarding the tissue distribution of BSE infectivity. Under field conditions, BSE infectivity has been found in the brain, spinal cord, and retina of the eye in animals with clinical disease (Ref. 16). The Scientific Steering Committee (SSC) of the European Union (Ref. 17) has also reported on the proportion of total infectivity in various tissues.[1] According to the report, in an animal with clinical BSE, approximately 64 percent of the infectivity is in the brain, 26 percent is in the spinal cord, 4 percent is in the dorsal root ganglia, 2.5 percent is in the trigeminal ganglia, and 3 percent is in the distal ileum. The eyes are estimated to contain less than 1 percent of the infectivity. Although available data are limited on the distribution of tissue infectivity, data from both naturally infected and experimentally infected cattle support the finding that the brain and spinal cord are the tissues with the highest level of infectivity.

Because available data indicate that the brain and spinal cord contain about 90 percent of BSE infectivity (Ref. 17), FDA believes that the most appropriate course of action is to concentrate efforts on excluding these highest risk tissues from animal feed. In deciding to propose to prohibit brain and spinal cord only, rather than the same list of materials previously defined as SRMs, FDA also considered the following: (1) Surveillance data indicate the current risk of BSE to U.S. cattle is very low, (2) the existing ruminant feed regulation provides strong protection against BSE, and (3) the new measures considered in this proposed rule represent a secondary level of protection to address failures in compliance that may occur with the existing ruminant feed rule. FDA believes that the existing ruminant feed rule provides the primary line of defense by prohibiting the use in ruminant feed of all material with potential BSE infectivity. The measures proposed by this rule will effectively reinforce existing ruminant feed protection measures by removing the tissues with the highest infectivity from all animal feed. As a result, these measures greatly minimize BSE risks if cross-contamination of ruminant feed with non-ruminant feed, or diversion of non-ruminant feeds to ruminants, were to occur.

2. Cattle Not Inspected and Passed for Human Consumption

As noted earlier in this document, the term ''cattle not inspected and passed for human consumption'' includes cattle not inspected and passed for human consumption by the appropriate regulatory authority as well as nonambulatory disabled cattle.

European surveillance data indicate that cattle found dead or culled onsite, where the carcass was submitted to rendering (fallen stock), and cattle with health-related problems unfit for routine slaughter (emergency slaughter) have a greater incidence of BSE than healthy slaughter cattle. Surveillance data in the European Union in 2002 showed that there were 27.95 positive animals per 10,000 emergency slaughter bovine animals tested and 6.15 positive animals per 10,000 fallen stock bovine animals tested compared to 0.31 positive animals per 10,000 healthy slaughter animals tested (Ref. 18). In Switzerland, the odds of finding a BSE case in fallen stock and emergency slaughter cattle were found to be 49 and 58 times higher, respectively, compared to the odds of finding a BSE case through passive surveillance (Ref. 19). These findings suggest that cattle not inspected and passed for human consumption are more likely to test positive for BSE than healthy cattle that have been inspected and passed for human consumption.

Because cattle not inspected and passed for human consumption are included in the population of cattle at highest risk for BSE (Refs. 18 and 19), and processes are currently not established in the rendering industry for verifying the age of such cattle through inspection, the agency is proposing to define brains and spinal cords from all cattle not inspected and passed for human consumption, regardless of age, to be cattle materials prohibited in animal feed. As noted previously, the

[1] A more recent report (Comer and Huntly, 2004, *Journal of Risk Research*, 7, (5) 523-543) attributes 84.3 percent of infectivity to brain and spinal cord and 9.6 percent to distal ileum. We chose not to use the data from this more recent report because its author (personal communications) explained that the newer data suggesting that the level of infectivity in the distal ileum at 6 to 18 months of age is higher than earlier estimates also suggest that it is lower than earlier estimates at 32 months of age.

term cattle not inspected and passed for human consumption is defined in this proposed rule to include nonambulatory disabled cattle as defined by FDA in its interim final rule on human food and cosmetics and USDA in its interim final rule on human food. If the brains and spinal cords are removed from these animals, FDA is proposing that the remaining material can still be used in animal feed. FDA notes that for cattle not inspected and passed that are diseased or that die other than by slaughter, the entire carcass of such animals is adulterated under section 402(a)(5) of the act. FDA has traditionally exercised enforcement discretion with regard to the use of such animals in animal feed. For example, see Compliance Policy Guide 675.400. FDA intends to continue exercising such discretion for the use in animal feed of the remaining material from cattle that are diseased or that die other than by slaughter when the brain and spinal cord are removed. Because comments to the ANPRM were mixed on the feasibility of removing SRMs from cattle mortalities, FDA requests further comment on which tissues should be removed from this class of animals and the feasibility of removing them.

In deciding to propose to allow these remaining materials to be used in animal feed, FDA considered the following: (1) brain and spinal contain about 90 percent of BSE infectivity (Ref. 17), (2) surveillance data indicate the current risk of BSE to U.S. cattle is very low, (3) the existing ruminant feed rule provides strong protection against BSE, and (4) the new measures considered in this proposed rule represent a secondary level of protection to address failures in compliance that may occur with the existing ruminant feed rule. FDA believes that the existing ruminant feed rule provides the primary line of defense by prohibiting the use in ruminant feed of all material with potential BSE infectivity. If the brains and spinal cords are not removed from such animals, FDA proposes that all parts of ''cattle not inspected and passed for human consumption'' be prohibited.

3. Mechanically-Separated Beef (MS)

Mechanically-separated (MS) beef is a finely comminuted meat food product resulting from the mechanical separation and removal of most of the bone from attached skeletal muscle of cattle carcasses and parts of carcasses. This proposed definition of MS beef is consistent with, but not identical to, the definition of the term used by USDA in its 2004 interim final rule (69 FR 1862) prohibiting its use in human food and by FDA in its 2004 interim final rule (69 FR 42255) prohibiting its use in human food, including dietary supplements and cosmetics. Those definitions provide that MS beef means a meat food product that meets the specification in 9 CFR 319.5. This USDA regulation applies to MS beef for human food use. Because there is MS beef produced solely for animal feed use that would not fall within the USDA specification, the definition of MS beef as proposed in this rule is meant to refer to beef that is the product of the mechanical separation process, regardless of whether it meets the USDA specifications for MS species in 9 CFR 319.5. The definition of MS beef is not meant to include product produced by Advanced Meat Recovery (AMR) systems used in the meat industry.

Although MS beef was not considered in the 2002 ANPRM, 2004 ANPRM, or in the IRT report, FDA has included this material in this animal feed proposed rule to ensure that any such material that is used in animal feed is not contaminated with the other material prohibited by this proposed rule. A comment submitted in response to the 2004 ANPRM said that FDA should allow mechanically separated beef to be used for pet food if SRMs are removed from material going into the mechanical deboning equipment that separates meat from bone, because some pet food operations are very similar to slaughter establishments and are capable of removing SRMs.

Because the mechanical separation process may result in the contamination of the MS beef product with spinal cord, FDA proposes to designate MS beef as cattle materials prohibited in animal feed if it is derived from carcasses or parts of carcasses from which cattle materials prohibited in animal feed were not previously removed.

4. Tallow

Tallow is an animal-derived hard fat that has been heat processed; most tallow is derived from cattle. Any risk of BSE transmission from tallow is a result of protein that is present as an impurity in the tallow. Taylor et al. (Refs. 20 and 21) found, in rendering studies with abnormal prion protein, that the prion protein did not preferentially migrate into the fat fraction, but remained with the protein fraction. Therefore, there is no reason to believe that tallow is likely to contain unusually high amounts of prion protein as a constituent of the insoluble impurities fraction that remains in tallow after rendering. Taylor et al. (Refs. 20 and 21) also reported that the various rendering processes used for tallow production in the United Kingdom were sufficient to produce tallow that did not result in infection when injected into the brains of mice, even though the starting material was highly spiked with the scrapie agent. Wilesmith et al. (Ref. 22) noted that the geographical variation in the incidence of BSE in the United Kingdom was not consistent with the use of tallow in cattle feed and concluded that the most likely source of infection in cattle was BSE-contaminated meat and bone meal.

The Office International des Epizooties (OIE), the world organization for animal health, categorizes tallow with insoluble impurities of no more than 0.15 percent as protein-free tallow. OIE guidelines recommend that tallow that meets this standard can be safely traded regardless of the BSE status of the exporting country (Ref. 23). FDA's Transmissible Spongiform Encephalopathy Advisory Committee (TSEAC) considered the safety of tallow and tallow derivatives in 1998 (Ref. 24). Members of the committee indicated that tallow is a food with negligible or no risk of transmitting BSE to humans or animals.

For the purposes of this proposed rule, tallow is defined as the rendered fat of cattle obtained by pressing or by applying any other extraction process to tissues derived directly from discrete adipose tissue masses or to other carcass parts and tissues. The 1997 ruminant feed final rule did not include tallow, fats, oils, and grease in the definition of animal proteins prohibited in ruminant feed because they are not proteins and were not considered to contain BSE infectivity. The agency said that infectivity studies conducted on some of these products (e.g., tallow) had demonstrated that they were at low risk of transmitting the TSE agent and; thus, it was unnecessary to restrict their use in ruminant feed (62 FR 30935). While the agency is not aware of any new scientific information suggesting that infectivity is present in tallow itself, the agency is concerned about potential BSE risks that tallow poses as a result of protein that is present as an impurity. These impurities may be of greater concern now because, as previously noted, new preliminary data suggest that the minimum infectious dose for BSE may be substantially lower than previously thought. We seek comment on this interpretation of the preliminary results.

The agency is proposing to prohibit the use of tallow in animal food or feed that is derived from cattle materials prohibited in animal feed. However, the agency proposes to exempt from this requirement tallow that contains no

more than 0.15 percent insoluble impurities. The proposal would require that impurities be measured by the method entitled ''Insoluble Impurities'' (AOCS Official Method Ca 3a–46), American Oil Chemists' Society, which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51, or another method equivalent in accuracy, precision, and sensitivity to A.O.C.S. Official Method Ca 3a–46. In response to the 2004 ANPRM, comments were submitted to the agency requesting that the primary method for the impurity determination for tallow be one other than the method in the Food Chemicals Codex. Comments stated that the domestic tallow industry primarily uses a method of AOCS to measure insoluble impurities. In comparison to the Food Chemicals Codex method, comments stated that the AOCS method is less expensive, requires less solvent, and has lower solvent disposal costs. In addition, it does not require specialized equipment or supplies. FDA agrees with these comments, and proposes that the primary method for the impurity determination for tallow be the method from AOCS rather than the method in the Food Chemicals Codex.

This proposed requirement for tallow would apply to all animal feed, including feed for ruminants. Since the existing ruminant feed rule § 589.2000 (21 CFR 589.2000) does not include provisions relative to tallow, this proposal represents a new requirement for ruminant feed as well as for feed for non-ruminants. To make clear that this proposed requirement would apply to ruminant feed, FDA is proposing to amend § 589.2000 to include the tallow requirements.

FDA is also proposing to exempt tallow derivatives from the requirements of this rulemaking. Tallow derivatives are produced by subjecting tallow to chemical processes (hydrolysis, transesterification, and saponification) that involve high temperature and pressure. FDA's TSEAC considered tallow derivatives in 1998 (Ref. 24), and determined that the rigorous conditions of manufacture are sufficient to reduce the BSE risk in tallow derivatives to insignificant levels. In addition, according to OIE guidelines tallow derivatives produced by hydrolysis, saponification, or transesterification using high temperature and pressure can be safely traded regardless of the BSE risk status of the country of origin (Ref. 23).

E. Disposal of Cattle Materials Prohibited in Animal Feed

FDA agrees with comments from the affected industry that a comprehensive plan would be needed to safely dispose of approximately 2.5 billion pounds of material if FDA decided to prohibit all dead stock and the full list of SRMs, as defined in the USDA interim final rule (69 FR 1862) and the FDA interim final rule (69 FR 42255), from being rendered for use in animal feed. The 2.5 billion pounds of cattle material includes approximately 1.4 billion pounds of material from cattle slaughtered for human consumption and 1.1 billion pounds of material from cattle not inspected and passed for human consumption that are currently being rendered for use in animal feed. FDA is concerned about the feasibility of establishing a new infrastructure to safely dispose of this large quantity of material, as well as the time it would take to implement these processes.

Limiting the list of SRMs as proposed by this rule reduces the volume of slaughter byproducts that would require alternative disposal. First, this proposal does not require the diversion from use in animal feed the small intestine and tonsils from the 28 million head of cattle under 30 months of age that are slaughtered annually. Second, only the brain and spinal cord (weighing 1.3 pounds per animal) rather than the head, spinal column, and small intestine, (weighing 88.5 pounds per animal) are diverted from the estimated 7 million head of cattle over 30 months of age that are slaughtered annually in the U.S. FDA believes that this more limited amount of material from slaughter operations can be disposed of through landfill, incineration, or alkaline digestion.

Based on comments received, FDA acknowledges that there is some uncertainty regarding the amount of material that will require alternative disposal as a result of the proposed requirements pertaining to cattle not inspected and passed for human consumption (i.e., dead stock and nonambulatory disabled cattle). FDA is including in this proposed rule the option to remove brain and spinal cord from cattle not inspected and passed for human consumption so that most of this material could continue to be rendered for use in animal feed. As previously noted, FDA intends to continue exercising enforcement discretion for the use in animal feed of the remaining material from cattle that are diseased or that die other than by slaughter when the brain and spinal cord are removed. As discussed in more detail in Section IV, Analysis of Economic Impacts, FDA acknowledges that while the proposed rule will result in additional material from these animals being disposed of by means other than rendering, FDA believes such increases will be modest. FDA seeks comment and further information on the feasibility of removing brain and spinal cord from cattle not inspected and passed for human consumption and on the impact of this proposed rule on the number of these cattle that would be disposed of by rendering.

In summary, FDA believes that the measures proposed by this rule can be more feasibly implemented than a full SRM ban, and can add substantially to the protection provided by the current BSE feed regulation. With this approach, the resulting volume of material requiring special disposal would be manageable in the short term. This approach is also consistent with the advice of the IRT that a staged approach may be necessary in implementation of an SRM ban. Further, FDA believes that other feed controls that FDA previously considered, such as dedicated facilities, are not needed if these high-risk tissues are excluded from animal feed channels. Therefore, at this time FDA is not proposing rulemaking to address other feed control recommendations of the IRT or the additional planned measures announced by FDA on January 26, 2004.

III. Description of Proposed Rule and Legal Authority

FDA is proposing to establish a new § 589.2001 (21 CFR 259.2001), Cattle materials prohibited in animal food or feed. While the existing § 589.2000 outlines requirements related to ruminant feeds only, proposed § 589.2001 outlines requirements intended to apply to food or feed for all animal species. The terms and requirements of proposed § 589.2001 are described in section IV.A of this document.

A. Definitions

The proposed § 589.2001(a) defines the following terms for the purposes of this regulation:

(1) *Cattle materials prohibited in animal feed includes*: (i) the brains and spinal cords of cattle 30 months of age and older; (ii) the brains and spinal cords of cattle of any age not inspected and passed for human consumption; (iii) the entire carcass of cattle not inspected and passed for human consumption from which brains and spinal cords were not removed; (iv) mechanically separated beef that is derived from cattle materials prohibited

under (i), (ii), or (iii) above; and (v) tallow that is derived from cattle materials prohibited under (i), (ii), or (iii) above. Tallow that is derived from cattle materials prohibited under (i), (ii), or (iii) above that contains no more than 0.15 percent insoluble impurities and tallow derivatives are not considered cattle materials prohibited in animal feeds.

(2) *Cattle not inspected and passed for human consumption* means cattle of any age that were not inspected and passed for human consumption by the appropriate regulatory authority. This term includes nonambulatory disabled cattle. Non-ambulatory disabled cattle are cattle that cannot rise from a recumbent position or that cannot walk, including, but not limited to, those with broken appendages, severed tendons or ligaments, nerve paralysis, fractured vertebral column, or metabolic conditions.

(3) *Mechanically separated beef* means a meat food product that is finely comminuted, resulting from the mechanical separation and removal of most of the bone from attached skeletal muscle of cattle carcasses and parts of carcasses.

(4) *Renderer* means any firm or individual that processes slaughter byproducts, animals unfit for human consumption, or meat scraps. The term includes persons who collect such materials and subject them to minimal processing, or distribute them to firms other than renderers (as defined in paragraph (a)(1)) whose intended use for the products may include animal feed, industrial use, or other uses. The term includes renderers that also blend animal protein products.

(5) *Tallow* means the rendered fat of cattle obtained by pressing or by applying any other extraction process to tissues derived directly from discrete adipose tissue masses or to other carcass parts and tissues.

(6) *Tallow derivative* means any product obtained through initial hydrolysis, saponification, or trans-esterification of tallow; chemical conversion of material obtained by hydrolysis, saponification, or trans-esterification may be applied to obtain the desired product.

B. Proposed Requirements

Proposed § 589.2001(b)(1) provides that no animal food or feed shall be manufactured from, processed with, or otherwise contain cattle materials prohibited in animal feed. Proposed § 589.2001(b)(2) provides new requirements for renderers that handle cattle material prohibited in animal feed. Proposed § 589.2001(b)(3) provides new requirements for renderers that handle any cattle material.

1. Proposed Requirements for Renderers That Manufacture, Process, Blend, or Distribute Cattle Materials Prohibited in Animal Feed

The proposed § 589.2001(b)(2) requires that renderers that handle cattle materials prohibited in animal feed use separate equipment or containers to handle such material once it has been separated from other cattle materials. This requirement is intended to ensure that equipment used to manufacture, process, blend, store, or transport cattle materials prohibited in animal feed or products that contain or may contain cattle materials prohibited in animal feed do not serve as a source of cross-contamination for materials intended for animal feed. In addition, proposed § 589.2001(b)(2) requires renderers that manufacture, process, blend, or distribute cattle materials prohibited in animal feed or products that contain or may contain cattle materials prohibited in animal feed must: (1) Label the prohibited materials in a conspicuous manner with the statement ''Do not feed to animals''; (2) mark the prohibited material with an agent that can be readily detected on visual inspection; and (3) establish and maintain records sufficient to track the prohibited materials to ensure such material is not introduced into animal feed, and make the records available for inspection and copying by FDA. These proposed requirements are intended to ensure that cattle materials prohibited in animal feed do not enter the animal feed chain and thus have no opportunity for inclusion in animal food or feed. FDA believes that such material must be both labeled and marked to ensure that it does not enter the feed channels since without such measures this material would be indistinguishable from cattle materials not prohibited by this proposed rule. Marking the material will provide a readily detectable method on visual examination by which all persons in the animal feed chain can be made aware that the a product is prohibited material or contains prohibited material. Marking also will serve as a way to make the status of the material known if, for some reason, the label ''Do not feed to animals'' is separated from the product.

2. Proposed Requirements for Renderers that Manufacture, Process, Blend, or Distribute Any Cattle Materials

Proposed § 589.2001(b)(3) requires that renderers that handle any cattle materials shall: (1) Establish and maintain records sufficient to demonstrate that material rendered for use in animal feed was not manufactured from, processed with, or does not otherwise contain, cattle materials prohibited in animal feed, (2) make copies of records available for inspection and copying by FDA, and (3) be in compliance with requirements under § 589.2000 regarding animal proteins prohibited in ruminant feed.

C. Proposed Recordkeeping and Access Requirements

The proposed recordkeeping requirements associated with this rule are focused on renderers because FDA believes this is the point at which cattle material prohibited in animal feed could enter the animal feed channel. Renderers, as defined in this proposed rule, receive cattle materials from slaughter facilities or receive entire cattle carcasses that were not inspected and passed for human consumption and further process that material so that it may be used in animal feed. FDA believes this is the critical control point in the feed and feed ingredient processing channel at which the exclusion of cattle material prohibited in animal feed must be documented. Once material is removed from cattle and further processed, we may not be able to obtain the information necessary to determine whether it is cattle material prohibited in animal feed. There is currently no way to reliably test feed or feed ingredients for the presence of the BSE agent or for the presence of cattle materials prohibited in animal feed.

This proposed rule requires that no animal feed or feed ingredient be manufactured from, processed with, or otherwise contain cattle materials prohibited in animal feed. However, FDA does not believe it is necessary for persons, other than renderers, that are involved in the manufacture or processing of feed or feed ingredients to maintain records documenting the exclusion of cattle materials prohibited in animal feed. FDA believes, for the reasons cited previously, that it is critical that such records be maintained at the point of the renderer. However, FDA believes that requiring the maintenance of such records at all manufacturing and processing points downstream would be redundant and provide little additional information of value. FDA seeks comments on the need to require that records be maintained by persons other than renderers.

Because at this time there is no way to test reliably for the presence of the BSE agent or the presence of the cattle materials prohibited in proposed § 589.2001(b)(1), renderers must depend

on records to ensure that the materials prohibited by this proposed rule are excluded from material intended for use in animal feed and that such material is appropriately disposed. Similarly, without adequate records kept by renderers and access to the records by the agency, FDA may not know whether renderers have complied with the requirements. We are proposing in § 589.2001(b)(2)(iv) that renderers that manufacture, process, blend, or distribute cattle materials prohibited in animal feed establish and maintain records sufficient to demonstrate that such material was not introduced into animal feed. Furthermore, we are proposing in § 589.2001(b)(3)(i) that renderers that manufacture, process, blend, or distribute cattle materials establish and maintain records sufficient to demonstrate that material rendered for use in animal feed was not manufactured from, processed with, or does not otherwise contain, cattle materials prohibited in animal feed.

Proposed § 589.2001(d) requires that the records required by this proposed rule be maintained for a minimum of 1 year. The 1-year record retention period is consistent with the existing requirements for ruminant feeds in § 589.2000(h). We believe that for the purposes of the recordkeeping requirements, 1 year is appropriate in light of the time that the products will be in the animal feed production and distribution systems. Extending the record retention period would have little practical value in determining the source of BSE in an animal. This is also considering the potentially long time period from ingestion of the BSE agent in feed to manifestation of clinical signs and lesions and the lack of a reliable estimate for the latency period.

The proposed rule does not specify the types of records that would need to be maintained in order to comply with the recordkeeping requirements. The agency seeks comments on what type of records would be appropriate and whether further detail is needed in the regulation regarding specific record requirements such as the specific data elements that must be included in such records.

D. Conforming Changes to § 589.2000—Animal Proteins Prohibited in Ruminant Feed

The requirements related to tallow in the proposed § 589.2001 are intended to apply to all animal feed, including feed for ruminants. Since the existing ruminant feed rule (§ 589.2000) does not include provisions relative to tallow, this proposal represents a new requirement for ruminant feed as well as for feed for non-ruminants. Therefore, due to concerns about protein impurities present in tallow, FDA is proposing to amend § 589.2000 to include tallow in the definition of ''protein derived from mammalian tissues'' and to add language that excludes from the definition of ''protein derived from mammalian tissues'' tallow containing no more than 0.15 percent insoluble impurities and tallow derivatives as specified in proposed § 589.2001.

E. Legal Authority

FDA is issuing this proposed regulation on animal feed under the food adulteration provisions in sections 402(a)(2)(C), (a)(3), (a)(4), (a)(5), 409, and 701(a) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 342(a)(2)(C), (a)(3), (a)(4), (a)(5), 348, and 371(a)). The term ''food'' is defined to include articles used for food ''for man or other animals.'' See section 201 of the act (21 U.S.C. 321(f)). We note that the material that would be prohibited under this proposed rule from use in animal feed continues to meet the definition of food. Therefore, this material would be adulterated or misbranded under the act based on violations of the proposed rule, as well as any animal feed or feed ingredients that were manufactured from, processed with, or otherwise contained, the prohibited material.

Under section 402(a)(3) of the act, a food is deemed adulterated ''if it consists in whole or in part of any filthy, putrid, or decomposed substance, or if it is otherwise unfit for food.'' ''Otherwise unfit for food'' is an independent clause in section 402(a)(3). The statute does not require that a food be filthy, putrid, or decomposed for it to be ''otherwise unfit for food.'' In FDA's interim final rule on the Use of Materials Derived from Cattle in Human Food and Cosmetics (69 FR 42256 at 42264), we concluded that a food can be ''otherwise unfit for food'' based on health risks, and sought comments on that interpretation. Because of the possibility of intentional or unintentional use of the materials that would prohibited under this proposed rule in ruminant feed and the risk of BSE to ruminants and humans from these materials, we have tentatively concluded that these materials would be ''otherwise unfit for food'' under section 402(a)(3) of the act. We seek comment on this interpretation.

Under section 402(a)(4) of the act, a food is deemed adulterated ''if it has been prepared, packed, or held under insanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered injurious to health.'' The failure to ensure that animal feed is prepared, packed, or held under conditions in which cattle materials prohibited in animal feed under this proposed rule do not contaminate animal feed would constitute an insanitary condition whereby the feed may have been rendered injurious to health. Thus, this insanitary condition would render the animal feed adulterated under section 402(a)(4) of the act.

Under section 402(a)(5) of the act, food is deemed adulterated ''if it is, in whole or in part, the product * * * of an animal which has died otherwise than by slaughter.'' Some cattle are not inspected and passed because they are diseased or have died before slaughter. Material from these cattle that are diseased or that die otherwise than by slaughter that is used as animal feed would render that feed adulterated under section 402(a)(5) of the Act. FDA has traditionally exercised enforcement discretion with regard to the use of such animals in animal feed. For example, see Compliance Policy Guide 675.400. FDA intends to continue exercising such discretion for the use in animal feed of the remaining material from cattle that are diseased or that die other than by slaughter when the brain and spinal cord are removed.

We are also relying on the adulteration provision in section 402(a)(2)(C)(i) of the act. Section 402(a)(2)(C)(i) deems a food adulterated if it is or bears or contains a food additive that is unsafe under section 409 of the act. Section 201(s) of the act, (21 U.S.C. 321(s)), defines as a food additive any substance whose intended use results or may reasonably be expected to result in it becoming a component of food unless, among other things, it is the subject of a prior sanction (explicit approval for a specific use by USDA or FDA before September 6, 1958), or is generally recognized as safe (GRAS). Section 409 of the act provides that a food additive is unsafe unless it and its use conform to a food additive regulation or an exemption under section 409(j).

Prior sanctions are described in part 570 (21 CFR part 570). FDA is not aware of any prior sanctions that relate to the present animal feed use of the cattle material that would be prohibited in animal feed under this proposed rule. Any person who intends to assert or rely on such sanction is required to submit proof of the existence of the applicable prior sanction. The failure of any person to come forward with proof of such an applicable prior sanction in response to this notice will constitute a waiver of

the right to assert or rely on such sanction at any later time.

A determination that a substance added directly or indirectly to a food is GRAS, for its intended use is generally based on scientific information regarding the composition of the substance, its use, method of preparation, methods for detecting its presence in food, and information about its functionality in food as determined by experts qualified by scientific training and experience to evaluate the safety of such a substance (§ 570.30). A substance added to food becomes GRAS as a result of a common understanding about the substance throughout the scientific community familiar with the safety of such substances. The basis of expert views may be either scientific procedures, or, in the case of a substance used in food before January 1, 1958, experience based on common use in food (§ 570.30(a)). Substances that are GRAS based on use before January 1, 1958, must be currently recognized as safe based on their pre–1958 use (See *United States* v. *Naremco*, 553 F. 2d 1138 (8th Cir. 1977; compare *United States* v. *Western Serum*, 666 F. 2d 335 (9th Cir. 1982)).

General recognition of safety based upon scientific procedures requires the same quantity and quality of scientific evidence as is required to obtain approval of a food additive regulation for the ingredient (21 CFR 570.30(b)). (See *United States* v. *Naremco*, 553 F.2d at 1143). A substance is not GRAS if there is a genuine dispute among experts as to its recognition (*An Article of Drug * * * Furestrol Vaginal Suppositories*, 294 F. Supp 1307 (N.D. Ga. 1968), aff'd 415 F.2d 390 (5th Cir. 1969)). It is not enough, in attempting to establish that a substance is GRAS, to establish that there is an absence of scientific studies that demonstrate the substance to be unsafe; there must be studies that show the substance to be safe (*United States* v. *An Article of Food * * * CoCo Rico*, 752 F.2d 11 (1st Cir. 1985)). Conversely, a substance may be ineligible for GRAS status if studies show that the substance is, or may be, unsafe, or if there is a conflict in studies.

Expert opinion that cattle materials that would be prohibited in animal feed under this proposed rule are GRAS would need to be supported by scientific literature and other sources of data and information, establishing that there is a reasonable certainty of no harm from the material under the intended conditions of use. Expert opinion would need to address topics such as whether BSE infectivity can be detected, and whether it is reasonably certain that the BSE agent will not be transmitted through cattle materials that would prohibited in animal feed under this proposed rule. The burden of establishing that a substance is GRAS is on the proponent of the substance. (See *CoCo Rico, supra*.)

For the reasons discussed in other sections of this document, the agency is tentatively concluding that cattle materials prohibited in animal feed under this proposed rule are not GRAS by qualified experts for use in animal food and, therefore, would be food additives. Section 402(a)(2)(C)(i) and (ii) of the act deems food adulterated ''if it is or it bears or contains any food additive which is unsafe within the meaning of section 409 * * * .'' Under section 409(a), a food additive is unsafe unless a food additive regulation or an exemption is in effect with respect to its use or its intended use. Therefore, in the absence of a food additive regulation or an exemption, the cattle materials that would be prohibited in animal feed under this proposed rule would be adulterated under section 402(a)(2)(C)(i) of the act because it bears or contains an unsafe food additive, and their presence in animal feed would render the food adulterated.

Under section 701(a) of the act, FDA is authorized to issue regulations for the act's efficient enforcement. The proposed regulation would require measures to prevent animal food from being unfit for food, being or bearing an unsafe food additive, being the product of an animal that died otherwise than by slaughter. The measures will also be required to prevent animal food from being held under insanitary conditions whereby it may have been rendered injurious to health. These proposed measures would allow for the efficient enforcement of the act. Under the proposed regulations, renderers would be required to establish and maintain records to track cattle materials prohibited in animal feed to ensure that such material is not introduced into animal feed and make such records available to FDA for inspection and copying. Once material is removed from cattle, we may not be able to obtain the information necessary to determine whether it is prohibited cattle material. Because at this time there is no way to test reliably for the presence of the BSE agent or the presence of the cattle materials prohibited in proposed § 589.2001(b)(1), renderers must depend on records to ensure that their products do not contain cattle materials prohibited from animal feed. In addition, without adequate records, FDA cannot know whether renderers have complied with the regulations that prohibit the use of certain cattle material in rendered products intended for animal feed. For example, we would not know from examination of a spinal cord whether the source animal was over 30 months of age at the time of slaughter or whether the cattle had been inspected and passed. Therefore, the proposed recordkeeping and records access requirements are necessary for the efficient enforcement of the proposed rule. Under the proposed rule, failure to comply with the recordkeeping and records access requirements would render the cattle material and any animal feed manufactured from, processed with, or otherwise containing, the cattle material adulterated under section 402(a)(4) of the act.

Furthermore, the proposed marking provision in § 589.2001 is necessary for the efficient enforcement of the act. Because there is currently no reliable method to determine which cattle materials would be the prohibited materials, marking is necessary to ensure compliance with the proposed requirement that animal feed is not manufactured from, processed with, or otherwise contains the prohibited cattle materials. Under the proposed rule, failure to comply with this marking requirement would render the cattle material and any animal feed manufactured from, processed with, or otherwise containing, the cattle material adulterated under section 402(a)(4) of the act.

FDA is issuing the proposed labeling requirement under sections 403(a)(1) and 201(n) of the act (21 U.S.C. 343(a)(1)). Section 403(a)(1) provides that a food is deemed misbranded if its labeling is false or misleading in any particular. Section 201(n) provides that:

> * * * in determining whether the labeling of a product is misleading, there shall be taken into account (among other things) not only representations made or suggested by statement, word, design, device, or any combination thereof, but also the extent to which the labeling * * * fails to reveal facts material in light of such representations or material with respect to consequences which may result from the use of the article to which the labeling * * * relates under conditions of use prescribed in the labeling * * * or under such conditions of use as are customary or usual.

The proposed rule would require cattle material prohibited in animal feed to be labeled ''Do not feed to animals.'' We believe this statement is material with respect to the consequences that may result from the use of this material within the meaning of section 201(n) of the act. As discussed in other sections of this document, the use of the material

that would be prohibited under this proposed rule presents a risk of BSE. Furthermore, there are no available definitive tests to detect this material in feed. Therefore, under this proposed rule, the failure to include this labeling statement would render the cattle material or feed containing the prohibited cattle material misbranded under section 403(a)(1) of the act. We are also proposing that such statement be made in a conspicuous manner. Under section 403(f) of the act, (21 U.S.C. 343(f)), a food is misbranded if ''any word, statement, or other information required by or under authority of this Act to appear on the label or labeling is not prominently placed thereon with such conspicuousness * * * and in such terms as to render it likely to be read and understood by the ordinary individual under customary condition of purchase and use.'' Therefore, under the proposed rule, the failure to include the statement ''Do not feed to animals'' in a conspicuous manner would render the cattle materials or any feed containing the cattle materials misbranded under section 403(f) of the act.

IV. Analysis of Economic Impacts

FDA has examined the impacts of the proposed rule under Executive Order 12866, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts, and equity).

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

FDA tentatively finds that the proposed rule does not constitute an economically significant regulatory action as defined in Section 3(f)(1) of Executive Order 12866. We base this conclusion on both a study of the impacts on industry of the proposed rule (on file at the Division of Dockets Management (see **ADDRESSES**) conducted for FDA by the Eastern Research Group (ERG)), a private consulting firm, and the discussion in the remainder of this section (Ref. 25). The agency has further tentatively determined that the proposed rule may have a significant impact on a substantial number of small entities. This proposed rule imposes no mandates on government entities, and would not be expected to require the expenditure of over $115 million in any 1 year by the private sector. As such, no further analysis of anticipated costs and benefits is required by the Unfunded Mandates Reform Act.

The following regulatory impact analysis begins with a summary of the proposed rule and the expected benefits and costs. Next, in section V.B of this document, we discuss the need for the regulation. In section V.C, we discuss the benefits of the proposed rule, while in section V.D, we discuss the costs. In section V.E, we discuss the costs to the government. Finally, in section V.F, we discuss the regulatory flexibility analysis.

A. Summary of Proposed Regulatory Impact Analysis

The proposed regulation would prohibit the use of certain cattle materials in any animal feed. The cattle materials prohibited in animal feed (CMPAF) would include the brain and spinal cord of all cattle 30 months of age or older, as well as the brain and spinal cord of cattle not inspected and passed for human consumption regardless of age, the entire carcass of cattle not inspected and passed if brain and spinal cord is not removed (again, regardless of age), as well as other materials. For the purposes of this proposed rule, the term ''cattle not inspected and passed for human consumption'' includes nonambulatory disabled cattle. Tallow derived from any of the prohibited materials named previously would also be banned from use in animal feed unless it contains no more than 0.15 percent insoluble impurities. MS beef from any of the prohibited materials named above would be prohibited from use in animal feed. Additional provisions of the proposed rule would require renderers that handle cattle materials prohibited in animal feed to use separate equipment or containers to handle this material once it has been separated from other cattle materials. Such renderers will also be required to follow certain procedures for labeling and marking prohibited material and recordkeeping and records access.

The benefits of the proposed rule include the elimination of the vast majority of the risk of spreading BSE to other cattle from intentional or unintentional use of non-ruminant feed for ruminants or cross-contamination of ruminant feed with non-ruminant feed or ingredients intended for non-ruminant feed. FDA believes that the proposed rule would effectively remove from use in non-ruminant feeds those cattle tissues that account for approximately 90 percent of potential BSE infectivity. Although the animal and public health benefit associated with the additional BSE risk reduction is paramount, the U.S. economy may also benefit from increased exports to the extent that the proposed rule, if finalized, persuades foreign governments that U.S. beef products are safe to import. Although we are unable to quantify these benefits, they are potentially large, because the expected loss of exports from the discovery of one infected cow in Washington State in December 2003 amounted to approximately $3.4 billion in the first year (Ref. 26).

The total costs to industry of complying with the proposed rule range from roughly $14 million to $24 million per year annualized over 10 years assuming a 7-percent discount rate (at a 3-percent discount rate, the cost would range from $14 million to $23 million). These estimated costs are the sum of the costs including: (1) The ban on the use of certain tissues from cattle 30 months of age or older and cattle not inspected and passed for human consumption in any animal feed and (2) feed substitution costs. We discuss the proposed brain and spinal cord prohibitions as direct costs to the affected firms (including disposal costs, where applicable) and the firms' lost revenues from the ban on these raw materials used in feed product inputs. Then, we discuss the costs incurred by feed substitution costs. Table 1 of this document shows a summary of these costs.

The proposed ban on the use of certain tissues from cattle 30 months of age or older and cattle not inspected and passed for human consumption in any animal feed would require slaughterers and renderers that process cattle 30 months of age or older and firms that process dead, down, disabled, and diseased cattle to separate the CMPAF from the remaining cattle offal that could still be used for animal feed. We estimate that, for slaughterers, the separation of these materials from cattle

30 months of age or older and cattle not inspected and passed for human consumption regardless of age would require about $555,000 in one-time capital costs (or $79,000 annualized at 7 percent and $65,000 annualized at 3 percent, over 10 years) (see table 1 of this document). We estimate that the annual cost of the additional labor to separate these CMPAF from other cattle offal is estimated to cost about $597,000 annually. Although compliance costs for these activities would be borne initially by slaughterers, and are presented as such by ERG, a portion of the costs are likely to be passed along to cattle producers and consumers. For renderers, capital investments and labor for separation and segregation of CMPAF would range from about $1.88 million to $4.65 million annually.

Our analysis does not project a specific disposal route for CMPAF due to the uncertainty inherent in disposing of such low volumes of material. Instead, it describes various disposal methods that may be employed and estimated a $12 per 100 lbs. (cwt) of CMPAF disposal cost (including transportation costs) for the low-cost end of the range of disposal methods. The cost to dispose of the CMPAF is estimated to range from $7.72 million to $9.97 million annually. Additional on-farm disposal of dead and nonambulatory disabled cattle is expected to increase compliance costs from about $1.02 million to $2.53 million annually (including labor and equipment). The annual revenues foregone from meat and bone meal (MBM) sales due to the prohibition of CMPAF in animal feeds are estimated at $1.41 million to $2.78 million, and foregone tallow sales are estimated at $1.37 million to $2.62 million. This includes the value from CMPAF from cattle 30 months of age or older and cattle not inspected and passed for human consumption regardless of age, as well as from whole carcasses of cattle not inspected and passed for human consumption that could not be rendered due to this proposed rule.

We considered including a provision in this proposed rule that would limit the use of all tallow in animal feed to that which contains no more than 0.15 percent insoluble impurities, not just tallow derived from the materials proposed to be prohibited in animal feed that contains no more than 0.15 percent insoluble impurities. Analysis of this alternative concluded that it would result in annualized costs of about $1.78 million. These costs would consist of capital and operating costs for polishing centrifuges that would be needed by a small segment of independent renderers. We have not included a provision requiring that all tallow meet the 0.15 percent limit in the proposal because the CMPAF ban would effectively negate the risk of infectivity in non-CMPAF-derived tallow. We invite public comments and data on the need for, and impacts of, a provision that would require all tallow used in animal feeds meet the 0.15 percent limit.

TABLE 1.—TOTAL COSTS ($ MILLIONS)

Cost Item	One-Time Cost	Annual Costs	Annualized Costs[1]
Slaughter Facilities			
Capital Investments	$0.56	N/A	$0.08
Labor		$0.60	$0.60
Lost Value of MBM (cattle 30 months of age or older, cattle not inspected and passed)		$1.41—$2.76	$1.41—$2.78
Lost Value of Tallow (cattle 30 months of age or older, cattle not inspected and passed)		$1.37—$2.62	$1.37—$2.62
Disposal of cattle not inspected and passed			
Labor		$0.12—$0.29	$0.12—$0.29
Equipment		$0.9—$2.23	$0.9—$2.23
Renderer Facilities			
Capital Investments	$3.11–$7.67	$0.04—$0.11	$0.49—$1.20
Labor		$1.40—$3.45	$1.40—$3.45
Disposal of CMPAF from cattle 30 months of age or older, cattle not inspected and passed		$7.72—$9.97	$7.72—$9.97
CMPAF Marking (High Estimate)		$0.01	$0.01
Recordkeeping/Labeling	$0.10	$0.05	$0.06
Feed Substitution		$0.30—$0.46	$0.30—$0.46
Proposed Rule Total Costs	$3.76	$13.91—$22.56	$14.44—$23.75

[1] Annualized costs equal to annual costs plus one-time costs at 7 percent over 10 years. Using a 3 percent rate, annualized costs equal $23,535,000.

FDA believes that this proposal, when evaluated in terms of its incremental cost-effectiveness at reducing risks from BSE, is more consistent with efficient science-based risk management than other regulatory approaches that it identified in the 2004 ANPRM. This proposal limits use of animal tissues for which infectivity is high relative to

tissue weight. Weight is a key determinant of the incremental costs from excluding tissues from rendering for animal feed. The approach adopted in this proposal is likely to be relatively cost-effective because it is directed primarily at those tissues for which infectivity is likely to be high relative to control compliance costs.

In the 2004 ANPRM, FDA stated it was considering prohibiting a larger list of cattle tissues (the full SRM list) from use in all animal feeds. Under this option, SRMs would be defined as the skull, brain, eyes, spinal cord, trigeminal ganglia, vertebral column (excluding the vertebrae of the tail, the transverse processes of the thoracic and lumbar vertebrae, and the wings of the sacrum) and dorsal root ganglia of all cattle over 30 months of age or older, including the tonsils and distal ileum of all cattle regardless of age. Additionally, this option would prohibit the small intestine of all cattle, all material from nonambulatory disabled cattle, all material from cattle that are not inspected and passed for human consumption, and MS beef. Lastly, tallow derived from other prohibited materials and containing more than 0.15 percent insoluble impurities would also be prohibited from use in all animal feeds under this SRM option. As detailed later in the analysis of alternatives, we have not included all of these measures in this proposed rule because we believe the proposed rule adequately addresses the risk from the presence of the highest risk cattle material in the animal feed chain. We also note that the proposed rule offers a more cost-effective approach to achieving nearly the same level of protection against the spread of BSE with regard to the presence of high-risk material in the non-ruminant feed supply.

The approach described in the 2004 ANPRM is itself a refinement of an approach announced early in 2004. In January 2004, shortly after USDA reported finding a BSE-infected cow in Washington State, HHS announced its intention to amend the current animal feed regulations by adding several materials to the list of substances prohibited from use in ruminant feed (Ref. 27). These materials included mammalian blood and blood products; inspected meat products that have been cooked, offered for human food, and then further heat-processed for feed (such as plate waste and used cellulosic casings); and poultry litter. Further, FDA planned to require establishments that manufacture, process, blend, or distribute both products containing mammalian-derived proteins and ruminant feed to use separate equipment or facilities in their manufacture, processing and handling.

Preliminary analysis of the regulatory approach described in the January 2004 announcement (Ref. 27) suggests that it is relatively less effective in risk reduction compared to the CMPAF and SRM bans because it would not remove the highest risk tissue (brain and spinal cord) from animal feed channels. Instead, the approach described in the January 2004 announcement would continue to allow the highest risk cattle material in non-ruminant feed, but includes measures intended to prevent cross-contamination of ruminant feed. Although we have not been able to quantify the risk reduction associated with the approach announced in January 2004, it is comparable in costs to the full SRM ban described in the 2004 ANPRM. As a result we are not proposing it here.

In developing this proposed rule we also considered other alternatives (not included here), including combinations of bans of various cattle tissues, from cattle of various ages (>30 months and <30 months) and various states (slaughtered for human food, deads, downers). All of these resulted in costs over $100 million per year with potential infective tissue reductions between 80 percent and 99 percent, when compared to the base case scenario.

Table 2 of this document lists the proposed rule (the CMPAF ban), the SRM ban, and one of the options mentioned previously, namely a ban on brain and spinal cord from slaughter cattle 30 months of age or older, and a ban on the entire carcass of all dead and downed cattle. The table lists both the expected costs of these options, and our best estimate of the percent reduction in cattle tissues known to harbor BSE infectivity. The proposed rule would reduce cattle oral ID50s (the amount of infective material that would result in a case of BSE in 50 percent of the cattle that consumed it) that are available for use in animal feed by about 90 percent as much as a ban on the full list of SRMs (option 3), while imposing only 7 to 10 percent of the costs of the SRM option (0.07 = $14 million/$195 million; 0.10 = $24 million/$240 million). The second option would reduce the cattle oral ID50s by more than 90 percent (a less than 10 percent increase over option 1), but would impose costs that are about five to nine times greater than option 1, though still only about 50 percent to 70 percent of the costs of option 3. Based on the level of protection provided against the spread of BSE and its cost-effectiveness, we believe the proposed rule to be the most appropriate. FDA seeks further comment and scientific and risk information on this analysis of additional regulatory options for strengthening animal feed safeguards.

TABLE 2.—COST-EFFECTIVENESS OF ALTERNATIVE POLICIES

Option (Description of Banned Tissues/Materials)	Infectivity Reduction[1]	Annual Cost ($ millions)
CMPAF list from (1) Cattle 30 months or older, (2) deads, (3) downers and (4), MS beef if CMPAF not removed from carcass, dedicated equipment/container requirement; tallow restriction (proposed rule)	90%	$14—$24
Brain and spinal cord from cattle 30 months or older, carcasses of all deads and downs, MS Beef	>90%	$115—$135[2]
Full SRM list from cattle 30 months or older, tonsils and distal ileum from cattle of all ages, carcass of all deads and downers, MS beef, tallow restriction	>99%	$195—$240

[1] Percent of ID_{50}s from an infected animal that would be banned from use in animal feed.
[2] Detailed cost estimate of this alternative is not included in the regulatory flexibility analysis section of this document.

B. Need for Regulation

Executive Order 12866 directs agencies to assess the need for any significant regulatory action and an explanation of how the regulation will meet that need. In this instance, FDA tentatively concludes that private incentive systems for both suppliers and purchasers in markets for cattle, rendering, and ruminant feed may inadequately address the risk of BSE. This market failure is a result of inadequate information being available to buyers of potentially infective animal feed. Because of the risk of cross contamination during feed production and the risk of inadvertently feeding non-ruminant feed to ruminants on an integrated farm, buyers of ruminant and non-ruminant feed would likely value a decrease in risk of BSE transmission if the market were able to provide it. Buyers, however, have little information about the BSE infectivity of feed because the costs to them of ascertaining infectivity are very high and higher than the costs to the feed producers. As a result, buyers may, without the current or proposed feed rules, unknowingly buy feed contaminated with BSE because of the presence of CMPAF.

The potential market failures created by the continued use of materials that this proposed rule would eliminate are the same as in the 1997 ruminant feed final rule. If feed purchasers could easily identify the risk of the infective agent associated with products from specific suppliers, they could more easily reduce these risks by refusing to buy feed products derived from ruminants known to have consumed prohibited CMPAF. Feed purchasers are unlikely to obtain the information they need due to the long incubation period for BSE that could lead to a suboptimal level of risk prevention by purchasers during the incubation period. Ruminant producers have no way of knowing whether a particular batch of feed or feed ingredients intended for ruminants are free of potentially infective proteins due to the possibility of CMPAFs being introduced through cross-contamination with feed or feed ingredients intended for non-ruminants.

C. Benefits

The purpose of the proposed rule is to further reduce the risk of BSE spreading within the cattle population. Reduced risk of BSE among cattle also reduces human exposure to variant Cruetzfeldt-Jakob disease (vCJD) believed to be caused by consumption of beef products contaminated with the BSE agent as well as increases the potential for exports by reducing foreign governments' concerns about the quality of U.S. beef. In this section, we first address the reductions in the risk of BSE to cattle in the United States and the corresponding protection of human health from the major provisions of the proposal. We then summarize the available evidence about the likely effect of this proposed rule on U.S. exports of beef and other livestock products.

1. Risk Reduction

FDA estimates that banning CMPAFs from use in any animal feed would effectively remove about 90 percent of any remaining potential infectivity from possible spread through the feed system. To derive this estimate of the risk reduction from the proposed CMPAF ban, we assume that the number of new BSE cases is proportional to the amount of all infectious material included in feed. Given this assumption, we can estimate the percentage reduction in the risk of new BSE cases as the percentage reduction in infectious material. A 1999 report by the Scientific Steering Committee of the European Union suggests that the brain and spinal cord constitute 89.7 percent of the total infective load in a case of BSE (Ref. 28). This rule would prohibit use in all animal feed of these tissues (CMPAFs) from cattle 30 months of age or older and all cattle not inspected and passed for human consumption. CMPAF, when taken from slaughtered cattle less than 30 months of age, would not be prohibited from use in all animal feed because the probability is very low that tissues from cattle of this age would contain BSE infectivity. Thus, banning CMPAF would effectively remove about 90 percent of total infectivity from animal feed. The absolute level of animal health risk reduced by this rule would depend on the number of infected animals in the United States and the extent to which cattle get exposed to infected material.

The potential human exposure to infectious materials from consuming beef is already small since USDA and FDA prohibit the use of certain cattle materials, including SRMs, from human food. In its preliminary analysis (Ref. 26), USDA modified the Harvard-Tuskegee model and estimated that the two interim final rules issued in January 2004 reduced human exposure to infectious materials by an average of 80 percent. For example, USDA estimated if 5 BSE infected bulls were introduced in 2003 and its control measures take effect in 2004, consumers would be exposed to 4 animal ID50s between 2004 and 2020 compared to 18.5 animal ID50s without these measures (Ref. 26, Table 13). The estimate of percent reduction in exposure is insensitive to the assumed number of infected animals introduced into the United States. To the extent this rulemaking further reduces the likelihood of the spread of BSE, it further reduces the already small likelihood of human exposure to the infectious material.

Assessing the public health implications from estimates of the human exposure to the BSE agent is difficult because there is no agreed upon dose-response relationship between human exposure to cattle ID50s and vCJD cases. Nonetheless, the experience of the United Kingdom suggests that the BSE agent is many times less infective in humans than in cattle. During the 1980s and 1990s, in the absence of preventive control measures, millions of ID50s may have been available for consumption by residents of the United Kingdom, since each cow with clinical symptoms of BSE contains about 7,800 ID50s. The cumulative number of definitive or probable vCJD cases identified in the United Kingdom as of September 1, 2005, is 157 (Ref. 29). Thus, human exposure to a few, or even a few dozen ID50s, may represent a relatively small risk to public health. FDA solicits additional information on the dose response relationship between ID50s and incidence of vCJD.

2. Increased Export Potential

A second major category of benefits pertains to the potential for increased exports of U.S. cattle products to countries that have acted to curtail exports since the discovery of the infected cow in Washington State in December 2003. However, we are unable to quantify the value of such increased exports, because of limits to the data and resources available to us. We note however, that USDA assessed this category of benefits in the interim final regulation that it issued in January 2004. In its assessment, it concluded that ''the 2004 beef export demand forecast has been reduced by 90 percent'' (Ref. 26, page 58). It reported that U.S. exports of beef, veal, and variety meats amounted to $3.8 billion in sales in 2003, and exports of live cattle resulted in an additional $63 million. The preventive measures contained in this proposed rule are expected to increase the likelihood that foreign governments ease some restrictions on imports of U.S. beef products and cattle.

Another indirect and incomplete measure of the potential benefits of this rule can be seen in measures of the commodities markets' reactions to the discovery of BSE cases. When the first BSE case was reported in Washington

State on December 23, 2003, beef prices had risen to record highs, but were expected to decline in 2004. After the discovery of the BSE case, the 5 area monthly weighted average steer price reported by USDA's Agricultural Marketing Service declined by about 14 percent from December 2003 to February 2004 (Ref. 30). By April 2004, the weighted average monthly price appeared to recover much of the loss. Although never fully reaching pre-BSE record levels, prices by mid–2004 appeared to be close to what they would have been had the BSE-infected cow not been identified. Such volatility in commodities markets may adversely affect independent beef producers who are risk averse and have hedged against such risks inadequately. To the extent that this proposed rule would prevent the development of a BSE-infected cow in the U.S., it may provide benefits to such beef producers by reducing their risk of financial loss and the cost to them of insuring against such risks.

D. Costs

We address the costs to industry of complying with this proposed regulation by considering in turn each of the individual provisions of this proposal. The costs of this proposed rule can be estimated as the sum of the costs of the different provisions.

FDA contracted with ERG to prepare an analysis of the impacts of the ban or restriction on use of CMPAF in proposed

§ 589.2001. Additionally, ERG analyzed the likely impacts of alternative options (on file at the Division of Dockets Management (see **ADDRESSES**) and henceforth referred to as the Alternatives Report) (Ref. 31)). In particular, these alternatives include the following: (1) A prohibition on the use of specified risk materials in animal feed, (2) the requirement for the use of separate facilities or equipment by those that process both mammalian protein prohibited in ruminant feed and ruminant feeds, and (3) a ban on the use of blood and blood products in ruminant feeds. The ERG analysis of this proposed rule presents estimates of costs for the meatpacking or slaughtering, rendering, and animal producer sectors. In addition, the ERG report provides estimates of impacts on representative small firms in the sectors that are impacted, to a significant degree, to fulfill requirements of a regulatory flexibility analysis. In the development of the Alternatives Report, ERG contacted establishments in the FDA inspection database that were likely to be affected by these regulatory options. Two separate telephone surveys were conducted, covering feed mills, renderers, and agricultural product transporters (the latter including trucking services at feed mills, renderers, and contract haulers). In some cases, written questionnaires were provided to the industry members. In addition, ERG used the services of industry consultants and other contractors for their technical expertise. The sector-specific surveys taken by ERG for the analysis of alternatives were each administered to fewer than ten industry members. In its development of the report on the proposed rule that would prohibit the use of CMPAF in animal feed, ERG again contacted industry members it had identified through its previous work on alternative policies, as well as industry consultants and industry associations.

A study prepared for an industry association concluded that about 35 percent of cattle (42 percent by weight) not inspected and passed for human consumption are currently rendered (Ref. 32). Our analysis estimated the number of cattle at about 17 percent. Whereas our analysis is based on other industry-supplied data that may be less dated, the industry analysis is based on USDA/APHIS data, that while older, resulted from several different USDA surveys.

The industry association's analysis differs from our analysis in the following three ways: (1) The percentage of animals currently rendered, (2) the number of animals, and (3) the weight of prohibited cattle material from each animal. Because of these differences, it may be potentially misleading to make a direct comparison of the findings of the two analyses. For example, if we substitute industry's percentages of animals currently rendered into our analysis, our estimate increases from 17 percent to 33 percent, but not to the industry association's estimate of 35 percent. The slight difference between our findings and those of industry (i.e., 33 percent compared to 35 percent) should be attributed to the difference in the number of animals rendered in each individual category of cattle.

Aside from the percentage of cattle not inspected and passed for human consumption currently rendered, the biggest source of variation between the two estimates can be attributed to the assumptions about the weight of CMPAF being rendered. The industry analysis assumed that the entire carcass would be affected by the ban on cattle not inspected and passed for human consumption. Discussions between ERG and industry experts convince us that, in most cases, renderers can adequately separate CMPAF from the other parts of a carcass. Adjusting the industry analysis to include only CMPAF and to include the same number of cattle as used in our analysis, decreases their estimate of the percentage of tissues rendered from 42 to 33 percent. This contrasts to our finding that only 17 percent of the volume of CMPAF from cattle not inspected and passed for human consumption is currently rendered.

Nevertheless, we acknowledge the uncertainty in all of these estimates. Due to the significance of this factor in estimating compliance costs for this proposed rule, we have adopted the 42 percent figure as the upper bound of the acceptable range and include cost estimates using this factor, where appropriate, within the cost methodology developed in the ERG analysis.

In general, the proposed ban on the use of CMPAF would impose three types of costs. First, it requires firms to buy equipment and to reallocate workers to change their production processes. This requirement imposes direct costs. Second, it prohibits the use of CMPAF by renderers who would use it to produce MBM and tallow. This prohibition reduces the revenue to slaughterhouses that sell CMPAF. Third, it also may oblige the buyers of MBM to turn to alternative ingredients that may be more costly or nutritionally inferior. Furthermore, prohibitions on the use of CMPAF in animal feeds can impose additional disposal costs, insofar as a previously valuable commodity is now turned into an undesirable by-product that requires disposal. Thus, we assess the lost revenue, direct costs, additional disposal costs, and feed substitution costs that may result from this proposed rule.

1. Lost Value of CMPAF

The proposed rule would prohibit the use of CMPAF in all animal feeds. Our analysis concluded that the proposed rule would cause slaughtering operations to incur additional capital investment costs and labor costs to modify and operate their plants in order to separate CMPAF from the rest of the cattle offal. Further, we project the value of the MBM and tallow based on historical prices, and discusses possible CMPAF or MBM disposal options for the industry. We also project the costs of additional disposal of on-farm dead and nonambulatory disabled cattle, CMPAF marking costs, recordkeeping, and labeling costs required by the proposal.

ERG used industry data to estimate the CMPAF quantities that would be removed from cattle 30 months of age or

older slaughtered for human food and cattle not inspected and passed for human consumption based on various factors including the age of the cattle, size of slaughter plant (federal or state inspection authority), and, for dead and nonambulatory disabled cattle of any age, the type and size of animal (beef or dairy cattle). ERG also used industry data on yield to project MBM and tallow production resulting from the current level of CMPAF quantities. Using 4-year averages of byproduct market prices ($180/ton for ruminant or mixed species MBM, and $360/ton for tallow), the annual value of the MBM and tallow originating from CMPAF is estimated at $976,000 and $794,000, respectively. Using the high end of the range discussed previously, the annual value of MBM and tallow would be $1,714,000 and $1,194,000, respectively. Additionally, the annual value of the MBM and tallow from the carcasses of deads and nonambulatory disabled cattle that would no longer be collected by renderers (and would likely be disposed of on the farm) is estimated by ERG at $430,000 and $576,000, respectively. The high end of this range of costs is estimated at $1,064,000 for MBM and $1,422,000 for tallow. The total value of the loss of MBM is estimated to range from $1,406,000 to $2,777,000, and the total value of the lost tallow is estimated to range from $1,370,000 to $2,616,000. The cost of the proposed provision that restricts tallow based on an impurity level is addressed in a later section of this analysis.

2. Direct Costs

There are 5 categories of direct costs, including: (1) Capital and labor for slaughtering and rendering, (2) the tallow restriction, (3) MS beef restriction, (4) CMPAF marking costs, and (5) labeling and recordkeeping costs. We turn to each of these below.

a. *Capital and labor costs—slaughtering and rendering.* The proposed rule would result in cattle slaughter operations separating CMPAF and arranging for its disposal separate from other cattle offal. This change in activity may be similar to the new activities required by the 2004 USDA interim final rule, pertaining to the prohibition of SRM for use in human food. It is likely, however, that SRM segregation activities required under the 2004 USDA interim final rule that banned SRM from use in human foods would differ to some extent from those that would result from this proposed rule. The 2004 USDA interim final rule, for example, would allow SRMs that are no longer available for human consumption to go to rendering for processing into MBM and tallow for use in feed for non-ruminant animal species. Under the FDA proposal, the CMPAFs (which are a small subset by volume of SRMs) could not be used in any animal feeds. Therefore, slaughterers would need to use separate offal lines for offal of non-CMPAF-origin and offal of CMPAF-origin.

For projected capital investment and labor, because of the relatively small volume of CMPAF per plant, and current high rate of brain and spinal cord removal, the rule should result in only modest compliance costs. After consulting with slaughter operations, ERG projected that all slaughter facilities would need additional offal bins designated solely for CMPAFs. Additionally, modifications of processes and procedures would be necessary for those slaughter facilities that handle larger volumes of animals. These offal bin and modification estimates ranged from only $150 for the smallest facilities up to $15,000 for the two largest operations in the United States. Aggregate one-time capital expenditures are estimated to be about $555,000, or about $79,000 annually (based on a 7-percent discount rate over 10 years).

Additional labor costs would be incurred at slaughtering facilities to handle CMPAF segregation and disposal. ERG, using its discussion with industry members, estimated that the smallest facilities would incur no additional labor costs, while the level of additional labor would range from only a few minutes at the next smallest facilities to slightly more than one production worker at the largest establishments. Based on the average pay for this worker of $20,420 (plus a 40 percent increase for benefits), ERG estimated the additional labor costs for this industry at $597,000. Per facility labor costs are expected to range from $313 annually for the smallest plants to $30,000 annually for the largest plants. Total capital and labor costs for slaughtering facilities are estimated at $676,000 ($597,000 in labor costs plus $555,000 annualized at 7 percent over 10 years; annualizing at 3 percent would reduce the cost by about $14,000 annually).

Renderers would also incur additional capital and labor costs to handle CMPAF segregation from cattle not inspected and passed for human consumption. After consulting an equipment manufacturer, ERG projected the cost of equipment purchases and installation for renderers based on the size of the operation. These costs ranged from about $7,300 at the smallest rendering operations to about $72,000 for the largest operations. Total capital costs for renderers are estimated at $3.1 million (annualized at $442,000 over 10 years at a 7-percent discount rate, or at $486,000 with a 10 percent maintenance cost included). Using the upper end of the range of cattle not inspected and passed for human consumption that are currently rendered, we estimate the capital costs for renderers at about $7.67 million (annualized at $1.09 million over 10 years at a 7 percent discount rate, or at $1.20 million with a 10 percent maintenance cost).

Renderer labor costs would also increase due to the CMPAF separation, segregation and disposal. Using the same labor rates as slaughterers, ERG projected that the additional labor would range from slightly over $1,000 at the smallest facility to about $56,500 at the largest facilities. The low end of the range of total incremental payroll costs at renderers are estimated at about $1.4 million annually. The high end of the range of annual labor costs is estimated at $3.5 million. Although no labor overhead is included, we believe it would be negligible because most facilities would hire less than one additional laborer. Total capital and labor costs at rendering establishments are projected to range from about $1.88 million to $3,938,000 annually ($1.4 million to $3.5 million in labor costs plus $486,000 in capital costs after annualizing at 7 percent over 10 years; annualizing at 3 percent would reduce costs by about $78,000).

b. *Tallow restriction.* The proposed rule would ban the use of tallow derived from the brains and spinal cords of cattle 30 months of age or older, the brains and spinal cords of all cattle not inspected and passed for human consumption, and the entire carcass of cattle not inspected and passed for human consumption, if the brains and spinal cords are not removed. An exception to this ban is provided for tallow from these sources that has no more than 0.15 percent insoluble impurities. We do not believe, however, that it would be economical for renderers or tallow manufacturers to further process the brains and spinal cords from these animals into tallow while complying with the proposed equipment separation and tallow purification requirements. We have, therefore, not included additional costs for this proposed provision. The lost value of this tallow (and MBM) has already been accounted for earlier in this analysis.

c. *MS beef restriction.* We do not project any compliance costs for the proposed MS beef provision. The proposed rule would prohibit the use of

MS beef from use in animal feeds if the brain and spinal cord of cattle 30 months of age or older, the brain and spinal cord of all cattle not inspected and passed for human consumption, or the entire carcass of cattle not inspected and passed for human consumption has not been previously removed from the cattle material used to make MS beef. USDA and FDA have already banned MS beef from use in human food. Through contacts with industry members, the analysis projected that about 20 firms, about one-half of which are renderers, would be affected by this proposed provision. These businesses, known as ''4D'' firms, collect dead and downer (nonambulatory disabled) cattle and sell the meat to pet food manufacturers, zoos and other animal feeding operations. The number of pet food manufacturers using this MS beef as an input has been declining in recent years, however, due to public perceptions concerning pet food inputs. The analysis assumes many of these firms use mechanical separation equipment as part of their operation. Census data does not separately estimate the sales volume of red meat from 4D animals and MS beef from 4D animals. ERG estimated the size of the market at about $100 million per year, based on an industry contact. Further, the analysis estimated that 75 percent of the value of this product is generated from revenues unrelated to the animal or carcass pick-up fees. Of this 75 percent, about 20 percent to 25 percent is believed to represent MS beef sales. Industry contacts report that the brain and spinal cords of dead and downer cattle are already removed prior to any mechanical separation of muscle tissue, thereby negating the need of further compliance efforts. We invite public comment and analysis of the proposed rule's expected impact on 4D animals and current 4D industry practices related to MS beef.

d. *CMPAF marking costs*. The proposed rule would require that renderers that handle CMPAF or products containing CMPAF mark this material or product so that it can be identified by visual inspection. The analysis determined that the use of dyes would most likely be used as the marking agent. Although the industry lacks experience with the use of these dyes, it is believed to be a relatively simple process that would be performed at the end of the rendering process. Using a range of current dye costs, ERG estimated total industry compliance costs of this requirement to be from about $1,700 to $13,000 per year. At the high end of the range of cattle not inspected and passed for human consumption, compliance costs of this provision would range from about $2,200 to $16,000 per year.

e. *Labeling and recordkeeping/access costs*. The proposed rule would require additional measures be taken by renderers that handle CMPAF or products containing CMPAF to ensure that the prohibited materials are not used in animal feed. The proposed requirements include labeling the material ''Do not feed to animals'', establishing and maintaining records sufficient to track cattle materials prohibited in animal feed to ensure such material is not introduced into animal feed, and making such records available to FDA. The proposed rule would also require renderers that handle any cattle materials to establish and maintain records sufficient to ensure that materials rendered for use in animal feed do not contain CMPAF. ERG judged that the proposed labeling and recordkeeping requirements would result in modest additional costs to all renderers. Although past FDA rulemakings have shown that labeling requirements can impose a substantial cost on industry, the analysis assumed that this rulemaking's simple new labeling requirements (applying primarily to bulk shipments) could be incorporated into current labeling practices. We solicit comment on this assumption. Likewise, any recordkeeping rules would only require incremental administrative activities (to modify procedures and periodically review and file) beyond current renderer recordkeeping requirements. Total industry costs are estimated at about $62,000 annually (one-time costs of $101,000 annualized at 7 percent over 10 years plus annual costs of $48,000). We anticipate that records access costs would be negligible. We invite public comment on the projected level of effort by industry and estimated compliance costs of the proposed labeling and recordkeeping/access requirements.

3. Disposal Costs

After separation from the material allowed to be used in animal feed, an estimated 64.3 million lbs. of CMPAF would no longer be rendered for use in animal feeds, and therefore would need to go to disposal. The analysis identified five options for the disposal of these SRMs. These options include landfilling of the CMPAFs without rendering, rendering for disposal, disposal through alkaline hydrolysis digesters, incineration, and composting. Due to the relatively small volume of CMPAFs, rendering for disposal option would likely not be economically viable. Contacts with industry members elicited various responses concerning the disposal method that would be employed under the CMPAF scenario. While landfilling the CMPAF may be a possibility in some areas, other states do not allow the disposal of animal carcasses in landfills. Our analysis concluded that landfilling would likely be one of several methods used to dispose of the CMPAFs.

Based on industry information gathered for both this analysis (the CMPAF option) and the Alternatives Report, ERG estimated the disposal costs at $12 per 100 lbs. (cwt) of CMPAF. This is substantially higher than its estimate in the Alternatives Report of the cost of SRM disposal. Higher per cwt transportation costs (which are included in the $12 per cwt estimate) are expected under the CMPAF scenario than under the SRM alternative due to the much smaller volume of materials requiring disposal under the CMPAF option. Other reasons for the higher disposal cost rate include the uncertainty in the disposal methods that will be used, and limited industry experience with at least some of these methods. This led ERG to project a conservative estimate that fully accounts for some uncertainty in cost factors. It is possible that future industry efficiency in CMPAF disposal under any of the disposal methods would lead to a reduction in projected $12 per cwt disposal cost. Nevertheless, the 64.3 million lbs. of CMPAF that would result under this proposed rule is estimated to result in $7.72 million in disposal costs ($6.19 million to slaughterers and $1.53 million to renderers). Using the 42 percent estimate of cattle not inspected and passed for human consumption, we estimate that the 83.1 million lbs. of CMPAF would result in disposal costs of about $9.97 million annually.

Cattle producers are also expected to incur additional disposal costs for cattle not inspected and passed for human consumption in the form of an increase in on-farm disposals. An increase in pick-up fees for cattle not inspected and passed for human consumption due to the slight loss in value of the rendered MBM would likely cause some of these animals to be disposed of at a lower cost (than the pickup fee) to the producer by burial on the farm. As previously discussed, our analysis estimated that about 17 percent of all cattle not inspected and passed for human consumption are currently rendered. Additionally, it predicted that about 26,000 less cattle (0.6 percent of all cattle not inspected and passed for human consumption, or about 3.5 percent of all cattle not inspected and

passed for human consumption that are rendered) would be disposed of in this manner, comprised of beef cows (no additional feedlot cattle included) and cattle under 500 lbs (calves). ERG estimates of the incremental labor and equipment cost of this activity sum to $1.02 million annually. Using the 42 percent estimate of cattle not inspected and passed for human consumption and the same 3.5 percent relative change in the reduction in renderer pick-ups of cattle not inspected and passed for human consumption, we project that at the high end of the range about 64,000 additional cattle would no longer be rendered, at a disposal cost of about $2.53 million.

In forecasting the change in percentages to be disposed on-site, the analysis considered in qualitative terms all factors in the formula renderers use to determine whether they will make pickups. These factors include the travel distance to the location and the expected quantities of animals to be recovered at the location. All pickup charges vary over time with the value of meat and bone meal and tallow, so pickup patterns are subject to market-driven price changes that are addressed in the agreements between renderers and dead animal suppliers.

The analysis also considered that exclusions of prohibited materials reduced the prospective value of the animals to be recovered. Further, the potential latitude for renderers to increase fees was considered, although renderers were fairly tentative in their own forecasts of whether and how much they might increase pickup charges in response to a potential new regulation.

ERG also considered that many relatively remote locations had already been excluded from renderer pickups due to price and regulatory changes over the past ten years. Thus, remaining pickup locations were likely to have reasonably favorable characteristics, although presumably some locations remained marginal in terms of the existing market economics. The data in Table 2–1 of the ERG report (market prices of rendered materials, and MBM and tallow yields) and data on animal weights was used to consider the value of the dead animal to the renderer.

The final forecast of the response in pickups is the judgment of the apparent significance of the regulatory change to the economics of the renderer pickups. Because the brain and spinal cord exclusion affected a relatively small portion of the animal carcass for nondecomposed animals, it followed that the effect on rendering economics was similarly fairly modest. The analysis concluded that the prohibition of these materials would not trigger wider, rippling effects through the renderers' situation.

While there was considerable data about market prices for rendered products and other aspects of pickup economics, data on the distribution of relative costs among dead animal suppliers across the United States was lacking. Such data would have been needed to make a more rigorous forecast of the likely changes in rendering pickup patterns. Given the dominating importance of local economic considerations in rendering economics, even a national distribution of such data would have been of uncertain value to the estimation process.

The industry association report (Ref. 32) (submitted in response to the 2004 ANPRM seeking comment on a more restrictive full SRM ban in animal feed) asserts that there would be no incentive to pick-up cattle not inspected and passed for human consumption if it is banned from animal feed absent exorbitant fees. While this proposed rule would not ban all tissues from cattle not inspected and passed for human consumption, we acknowledge some uncertainty in the response by renderers in this area due to this proposed rule. We request comment on the number and percent of cattle not inspected and passed for human consumption that are currently rendered, as well as the expected number of additional cattle that would be disposed of on farms or elsewhere due to this proposed rule, and the costs of this activity.

4. Feed Substitution Costs

In both FDA's proposed and final rules concerning the prohibition on the use of mammalian proteins in ruminant feeds in 1997, the agency included the cost of feed that would be substituted for the MBM that would be prohibited from use in ruminants. The same issue arises with the proposed rule's creation of a list of CMPAFs that would be prohibited from use in animal feeds. Animal feed manufacturers would substitute other protein sources for the MBM that was previously manufactured from CMPAF.

In the analysis prepared for the 1997 rule banning the use of mammalian protein in ruminant feeds, the agency assumed a $31.76 per ton price increase ($38.33 adjusted to expected 2005 dollars by the average of general inflation from 1997 through 2004) for the substitute material, in this case soybean meal, as well as additional minerals that would be required to provide the same nutritional level as MBM. We accept this as a conservative estimate of the long-term price differential. The price differential between the two varies constantly based on the weather, feed ingredient imports, slaughter rates, and other factors. Since January 2004, soybean meal has been priced from $58/ton below MBM to $55/ton above MBM (Ref. 33).

We cannot predict the future price differentials between the two feed substitutes, but accept the previous number of $38.33/ton as a reasonable current estimate. Applying this feed cost increase over the 7,800 tons of MBM that would not be created as a result of this proposed regulation as calculated by ERG, results in $299,000 in additional feed costs. Using the high end estimate of the number of cattle not inspected and passed for human consumption that are currently rendered, additional feed costs would amount to about $457,000. We invite comment and data on the feed substitution costs that this proposed rule would impose.

5. Distribution of Impacts of CMPAF From Cattle 30 Months of Age or Older Slaughtered for Human Consumption and Cattle Not Inspected and Passed for Human Consumption

ERG, primarily for the purposes of the Regulatory Flexibility Analysis described in more detail below, estimated that a portion of the costs to slaughterers will be passed through to consumers and animal producers. Similarly, a portion of the costs to independent renderers for handling CMPAF from cattle not inspected and passed for human consumption will likely be passed back to ranchers, dairy farmers, and feedlot operators by way of increased pickup or disposal fees. We request public comment and data on the relative size and distribution of the likely pass through of the impacts of this rulemaking.

ERG also addressed the relative importance of the loss of MBM due to the CMPAF prohibition to both integrated packer/renderers and independent renderers. This analysis projected reductions of up to 0.2 percent of MBM production at independent renderers, while reductions of less than 0.1 percent of MBM production would occur at integrated slaughterers (packer/renderers)as the low impact estimates. Using the high estimate of cattle not inspected and passed for consumption that are currently rendered, we project a reduction of up to 0.4 percent of MBM production at independent renderers. Independent renderers rely to a greater extent on deadstock and, with the January 2004 USDA rule banning the use of nonambulatory disabled cattle in

human food, also on nonambulatory disabled cattle as inputs to their production process, while the integrated slaughterers do not.

E. Government Costs

The proposed rule may require the expenditure of additional funds by the Federal government, but the increased expenditures are not expected to be significant. The tissues that would be included on the list of cattle materials prohibited in animal feed, due to this proposed rule, may increase the number of inspections or the length of time necessary to inspect an establishment to verify compliance with the new proposed requirements. However, the number of establishments inspected is not expected to substantially change as a result of this proposed rule. All establishments that would be inspected for compliance under proposed § 589.2001 would already be subject to § 589.2000 or other federal rules. FDA has not estimated any additional costs due to this based on the assumption that the additional resources would not be significant. We invite comment on the issue concerning additional government resources that would be required by this proposed rule. ERG's discussions with industry members led to the conclusion that no new rendering establishments will be constructed and dedicated to disposal rendering as a result of the CMPAF ban. Without additional renderer establishments subject to this or other FDA regulations, FDA inspection efforts are not expected to noticeably increase as a result of this proposed rule.

F. Sensitivity Analysis

Due to the previously described uncertainty concerning the additional cattle not inspected and passed for human inspection that would no longer be rendered as a result of this proposed rule, we have included a sensitivity analysis around this cost factor. The ERG report projected that an additional 0.6 percent of the current 17 percent of cattle not inspected and passed for human consumption that are currently rendered would not be rendered as a result of this rule and would likely be buried on the farm or elsewhere (a relative reduction of 3.5 percent (0.006/0.17) of the cattle not inspected and passed for human consumption that are currently rendered). Table 3 estimates the total costs of the proposed rule for various estimates including the original 0.6 percent reduction in the number of cattle not inspected and passed for human consumption that are rendered, as well as reductions of 1 percent and 2 percent (representing relative reductions of 5.8 percent (.01/.17) and 11.6 percent (.02/.17), respectively). High end cost estimates (derived from the 42 percent estimate of the number of cattle not inspected and passed for human consumption that are currently rendered) for the same relative percent reductions are also included.

If 42 percent of cattle not inspected and passed for human consumption are currently rendered, and that implementation of this proposal would cause an additional 2 percent of all cattle not inspected and passed for human consumption not to be rendered, then the total incremental costs of the rule would rise to about $36 million per year. FDA solicits comment on the likely effect of this proposal on the percent of cattle not inspected and passed for human consumption that is not rendered and on the costs to society of the disposal methods likely to be used as an alternative to rendering.

TABLE 3. SENSITIVITY ANALYSIS

Reduction in Percent of Cattle Not Inspected and Passed for Human Consumption That are Rendered (Proposed Rule)			
	0.6%	1.0%	2.0%
Total Costs	$14.4—$23.7 million	$16.2—27.8 million	$19.8—$36.3 million

G. Regulatory Flexibility Analysis

1. Small Business Impacts

The Regulatory Flexibility Act requires agencies to prepare a regulatory flexibility analysis if a rule is expected to have a significant impact on a substantial number of small entities. The discussion in this section, as well as data and analysis contained in sections two through four of the ERG report, constitute the agency's compliance with this requirement.

One requirement of the Regulatory Flexibility Act is a succinct statement of any objectives of the rule. As stated previously in this analysis, with this proposed rule the agency intends to strengthen the existing safeguards designed to help prevent the spread of BSE in U.S. cattle, as well as further reduce any risk posed to humans from the agent that causes BSE.

The Regulatory Flexibility Act also requires a description of the small entities that would be affected by the proposed rule, and an estimate of the number of small entities to which the proposed rule would apply. Our analysis focused on renderers and animal slaughterers, and to a lesser extent on 4D firms. Additionally, the Alternatives report addresses possible impacts to small dairy farms from the blood products alternative, and impacts to feed mills from the dedicated equipment/facilities alternative (options summarized in the alternatives section of this document).

Animal slaughterers would be classified in the North American Industrial Classification System (NAICS) under code 311611—Animal (Except Poultry) Slaughtering and renderers under NAICS code 311613—Rendering and Meat Byproduct Processing. The Small Business Administration (SBA) classifies slaughterers and renderers with less than 500 employees as small businesses.

The ERG study estimated the number of small businesses that would be affected by the proposed rule in its analysis of compliance costs. The number of slaughterers and renderers affected by the CMPAF ban (including recordkeeping/labeling and marking costs) were estimated at 689 and 141, respectively. This would include all federally inspected slaughter plants and the all those renderers that handle mammalian proteins that are currently prohibited in ruminant feed. Using U.S. Census and USDA data, ERG then distributed the number of affected entities in each business sector across the size classes of establishments using the same proportions as those presented in the total number of establishments. Using this distribution, it appears that about 97 percent of slaughterer establishments and all renderer establishments would be considered small businesses. However, the existence of many multi-establishment rendering and slaughtering firms would tend to overestimate the number of small businesses within each sector. In fact, other Census data shows that only 79 percent of rendering firms would be considered small businesses (Ref. 34). Nevertheless, we believe that the number of affected small businesses in

both sectors would still be considered substantial.

The CMPAF ban would primarily affect slaughterers and renderers. ERG used its Small Business Impact Model (SBIM) to predict net income and closure impacts for slaughterers and renderers by size of establishment (for a full explanation of the SBIM, see section 4.2 of the Alternatives report (included in the docket (Ref. 31)). The model assumes there is no pass through of compliance costs. Although this is a conservative assumption, smaller businesses in fact are probably less able to pass through compliance costs than larger businesses in the same industry, all other things equal. Under the no pass through assumption, the model predicts moderate net income impacts that could result in the closure of up to one slaughtering and one rendering establishment. We acknowledge that net income impacts would likely be higher under the higher estimate of the percent of cattle not inspected and passed for human consumption that are currently rendered.

Our analysis for simplicity ignores any potential increases in MBM prices that may ensue as a result of this proposed rule. In fact, some modest price increases may occur as foreign demand for MBM increases in response to reduced risk of BSE infectivity. Such price increases may mitigate any reduction in net income of independent renderers.

ERG developed a separate market model to estimate the impact of a CMPAF ban on beef prices and output. It implies that about 50 percent of compliance costs will be passed on to consumers, 38 percent will be passed back to cattle producers, and 12 percent will be incurred by slaughterers. The model predicts that cattle producers would realize only a 0.01 percent reduction in price for cattle, which would not be considered a significant impact. Nevertheless, the agency acknowledges the possibility of significant impacts on a substantial number of small slaughterers and renderers.

The agency believes that the annual feed substitution costs (from about $300,000 to $457,000) would not constitute a significant impact when spread across the thousands of non-ruminant animal producers that currently use ruminant protein in animal feeds. The agency requests comments and additional data on the likely small business impacts on slaughterers, renderers, beef cattle producers, dairy cattle producers, or other animal producers and firms in related industries.

2. Analysis of Alternatives

We considered five other measures that are not included in this proposed rule. These five measures, discussed in turn in the following paragraphs, include: (1) A requirement that those facilities handling both mammalian protein that is currently prohibited in ruminant feed and ruminant feeds use dedicated facilities or equipment for each, (2) a ban on the use of poultry litter in ruminant feeds, (3) a ban on the use of blood and blood products in ruminant feeds, (4) a ban on the use of plate waste in ruminant feeds, and (5) a ban on the use of a larger list of SRM (using the USDA and FDA definition for human food) from all animal feeds.

a. *Dedicated facilities/equipment requirement.* As mentioned previously in this preamble, FDA considered requiring that those facilities that process or otherwise handle both mammalian protein currently prohibited in ruminant feed and prepare feed or feed ingredients for ruminants use separate facilities or equipment in order to prevent cross-contamination. This option was included in the public announcement concerning agency intentions in January 2004. The proposed rule's dedicated equipment requirement concerns the issue of cross-contamination of CMPAFs with other cattle material once it has been separated, whereas the requirement for dedicated equipment/facilities under this option concerns cross-contamination of mammalian protein currently prohibited in ruminant feeds and ruminant feeds under the current mammalian to ruminant feed ban. Due to the large tonnage difference between CMPAFs and all animal protein currently being rendered, this alternative would result in larger industry impacts than would the dedicated equipment requirement concerning CMPAFs alone.

In its Alternatives Report, ERG projects that this option would be expected to reinforce the current trend in which increasing numbers of feed mills discontinue the use of mammalian protein currently prohibited in ruminant feeds in favor of porcine, avian, or plant-based proteins. ERG estimates that only 124 out of more than 5,100 feed mills and 41 out of 235 renderers currently produce ruminant feed or feed ingredients and handle or process ruminant MBM. Based on its small survey of feed mills, ERG estimates that only 27 of these feed mills and 4 renderers would invest in dedicated facilities or equipment in order to continue or begin to distribute both prohibited materials and ruminant feeds or feed ingredients.

ERG consulted an agricultural architecture and engineering firm to prepare cost estimates of investment in dedicated feed mill facilities. Based on these estimates and discussions with feed mill operators, ERG projects that no new mills would be constructed as dedicated facilities to comply with this option, but rather currently operating or idle mills would either be renovated or expanded as dedicated facilities, or would handle a dedicated line of equipment. The annualized costs of these investments for the 27 feed mills were estimated at $6.2 million over 10 years at a 7-percent discount rate (at a 3-percent discount rate over 10 years, the cost would be $5.1 million per year). The effect on the ruminant MBM market caused by the discontinued use by those that currently offer it in feeds but would choose not to invest in dedicated facilities or equipment would be expected to be small.

ERG performed a similar survey of some of the 41 renderers that the FDA inspection database showed as handling mammalian proteins currently prohibited in ruminant feed and produce materials intended for use in ruminant feed. The results of this survey indicate that very few renderers intend to invest in dedicated facilities. Based on its small sample, ERG predicts that only 4 renderers would do so. These were all expected to currently have partial separation or dedication capabilities in place. Based on discussions with renderer operators through this and previous surveys, ERG predicts that the renderers that invest in dedicated facilities would spend, on average, about $2 million each. The total cost of investment in dedicated facilities would be $8 million. Annualizing this total over 10 years at a 7-percent discount rate results in an annual cost of $1.14 million ($940,000 over 10 years at a 3-percent discount rate).

The dedicated facilities/equipment requirement would also extend to the transportation services for mammalian proteins currently prohibited in ruminant feed. Based on another survey of selected feed mills, agricultural trucking companies and renderers concerning their current transportation of products, ERG determined that agricultural transporters would also incur costs as a result of this provision of this option. The option implies that renderer delivery trucks that carry prohibited MBM, including contract haulers providing this service, would no longer be allowed to backhaul ruminant feed or ruminant feed ingredients as part of its delivery routine. Due to this

change in service, ERG estimated a transportation cost increase of 40 to 80 percent for the 141 rendering facilities that process mammalian protein currently prohibited in ruminant feed. Although most of these renderers do not handle both mammalian protein currently prohibited in ruminant feed and ingredients for feeds for ruminants, they rely on transportation services (most likely contractor services) that transport both materials, and thus would not be in compliance. These transportation cost increases are projected to total $8 to $16 million per year for the rendering industry.

Feed mills would also be expected to incur transportation cost increases due to the prohibition under this option on backhauling ruminant feeds in trucks that are used to deliver feeds with mammalian proteins currently prohibited in ruminant feed. Since backhauling does not occur as often in the delivery of feed due to shorter average distances between feed mills and animal producers than from renderers to feed mills, ERG predicted the transportation cost increases at 25 to 50 percent for feed mills. Based on ERG's calculation of the quantity of feed that would be affected by the proposed rule (4.5 million tons) and the average transportation cost per ton of feed ($12.66), total transportation cost increases for feed mills were estimated to range from $14.2 to $28.4 million per year. These costs would include the amortized cost of capital equipment such as additional trucks, as well as incremental operating and maintenance costs. These costs would be incurred by about 200 feed mills. Again, this number is larger than the number of mills that handle both mammalian proteins currently prohibited in ruminant feed and ruminant feeds due to the additional number of mills that would rely on contract feed haulers that handle both materials. ERG acknowledges uncertainty in these estimates due to possible changes in mill dedication patterns, the analysis of which would have required additional geographic distribution data on feed mills and feed types.

If CMPAFs are banned from use in all animal feeds as proposed in this rule, the agency believes that a provision requiring dedicated facilities or equipment for those handling mammalian proteins currently prohibited in ruminant feed and preparing ruminant feeds would not be necessary because this proposed rule is expected to reduce the number of ID_{50}s available for use in animal feeds by about 90 percent. Requiring separate facilities or equipment for mammalian proteins currently prohibited in ruminant feed and ruminant feeds would not be expected to significantly reduce the risk of feeding prohibited proteins to ruminants, because nearly all of the potentially BSE infective tissues would be unavailable for use in feeds for any animals because of the CMPAF prohibition. Therefore, the risk is minimal that the BSE agent would be present even if cross-contamination occurs between mammalian protein intended for non-ruminant feed and ruminant feeds. The agency requests comment and data on the need for a requirement for dedicated facilities/equipment for those facilities that handle both mammalian proteins currently prohibited in ruminant feed and ruminant feed when a CMPAF ban also exists.

b. *Poultry litter prohibition*. The agency also considered a ban on poultry litter in ruminant feed. Poultry litter contains bedding material, spilled poultry feed, and manure, and is a waste by-product of poultry production. Because poultry feed may contain mammalian meat and bone meal currently prohibited in ruminant feed, there is a risk that cattle fed poultry litter containing spilled poultry feed may be exposed to prohibited meat and bone meal through that spilled poultry feed.

This alternative would ban the use of poultry litter in all ruminant feed. Its costs would be comprised of both substitution costs for the replacement materials needed to provide an equivalent nutritional value, and disposal costs if the poultry litter cannot be used as an alternative product, such as fertilizer. The risk reduction would be the elimination of the possibility of the spread of BSE through the recycling of mammalian proteins currently prohibited in ruminant feed back into cattle feed through poultry litter including the spilled poultry feed containing prohibited mammalian proteins.

A preliminary risk assessment of poultry litter submitted to the agency by an industry member predicted that in its worst-case scenario, under the current ruminant feed ban rule, a cow would need to eat 70.1 tons of litter to be exposed to 1 ID_{50} (Ref. 35). FDA modified some of the assumptions used in this risk assessment and predicted what would happen if there was no mixing during the cleanout process so that the spilled feed remained concentrated in a small portion of the bedding. Under this scenario, a ruminant fed only contaminated litter from under the poultry feeders must consume 3.4 tons to consume 1 ID_{50}. This tonnage is still beyond the volume a stocker steer would realistically consume under normal circumstances due to its relatively short life. Similarly, dairy cows would also not be expected to consume this amount since poultry litter is not generally used in feed for lactating dairy cows. Because it appears to pose only a small baseline risk of BSE for ruminants, FDA currently believes that banning poultry litter from ruminant rations would have little or no affect on the human risk while increasing the environmental risks of its alternative disposal methods. FDA requests comments on this issue.

Most poultry litter is not used as cattle feed. As an organic source of nutrients for plants, it has been applied to farmland for years. This practice, however, raised environmental concerns that excess nitrogen and phosphorus could leach from the litter and contaminate waterways. Since rumen microbes can efficiently metabolize poultry litter, feeding litter to cattle provides an alternative use to land application that benefits both poultry growers and cattle producers. Where poultry and cattle operations overlap, poultry growers are willing to sell litter at a price that exceeds the value of any alternative use. Cattle producers obtain a feed ingredient for a lower price than the next best alternative ingredient in the ruminant ration. Banning the use of litter in ruminant feed will likely increase the price of rations for ruminant producers and decrease revenues for poultry producers. Moreover, if poultry producers must dispose of unwanted litter, their operating costs would increase.

To analyze the impact of the ban on poultry litter on ruminant producers, we calculated the per ton price of equivalent cattle rations with and without poultry litter. Based on feed ingredient prices in March 2004 and using equivalent cattle ration formulations recommended by University of Georgia, rations with 38 percent to 53 percent poultry litter average about $65 per ton (Ref. 36). Equivalent rations without poultry litter average about $80 per ton, or about $15 per ton more than the ration with poultry litter. The average cattle fed about 16.5 pounds of feed daily for 200 days consumes a total of 0.6 tons to 0.9 tons of litter, depending on the percentage of litter in the ration. This suggests that the cost of feed will increase by about $25 per head ($15 per ton x 200 days per head x 16.5 pounds per day/2,000 pounds per ton). The annual supply of poultry litter can potentially feed between 1.3 million (1.1 million tons of litter / 0.9 tons of litter

per cow) and 3.2 million cows (2 million tons of litter / 0.6 tons of litter per cow). Thus the total cost of feed could increase from $32 million ($24.75 per cow x 1.3 million cows) to $80 million ($24.75 per cow x 3.2 million cows).

Vertical integration in the poultry industry often results in contract growers' contractual responsibility for litter management. For many reasons, including regional distribution of poultry producers and costly transportation, commodity markets do not handle poultry litter. Some poultry producing states have taken the initiative to promote and develop an infrastructure for litter markets, including programs to match the producers and users of poultry litter; providing transportation subsidies, or encouraging informal ''markets'' where buyers and sellers can contact each other.

Alternative uses for poultry litter are being developed, but are not widely available currently. With technology developed in the United Kingdom, the nation's first poultry litter fired power plant is being constructed in Missouri. Research is underway to convert litter into activated carbons that can absorb environmental pollution.

In areas where cattle and poultry production overlap, banning poultry litter from ruminant feed may require that growers store litter, probably in deep stacking sheds, until alternative uses can be identified. If it is not possible to store litter, however, growers may need to dispose of surplus litter in landfills. To illustrate the cost of a worst-case scenario, disposal of the entire 1.1 million to 2 million tons of litter would range from $44 million to $160 million with disposal fees that range from $40 to $80 per ton.

Without alternative outlets for litter banned from ruminant feed, the total short-run costs might range from $76 million to $240 million. Contract growers and ruminant producers, many of whom are small entities, would incur these costs. Although the poultry litter alternative has not been included in the proposed rule, the agency requests comment on the need for a poultry litter ban in ruminant feed when a CMPAF ban in all animal feed also exists.

c. *Blood and blood products prohibition*. We also considered an alternative that would have prohibited the use of blood and blood products in ruminant feed. We did not include this option in this proposed rule because we could not at this time show any BSE risk reduction as a result of such a prohibition, and these products have beneficial effects in ruminant feed. This option, if adopted, would result in one-time direct costs of about $7 million (annualized at $990,000 over 10 years at 7 percent) for relabeling, reformulation and reregistration, as well as additional revenue losses for the product manufacturers.

ERG identified and profiled the various blood and blood products used in animal nutrition. These products include plasma-based therapeutics and feed additives, premium blood-based feed additives and commodity blood meal. The prohibition of blood and blood products would result in some additional administrative costs to feed mills. It would require some mills to reformulate the rations in feeds. Relabeling efforts would also be required for some feeds, depending on whether the current label identifies specific animal proteins or identifies proteins under the broader term ''animal protein products.'' Additionally, some of these feeds would need to be reregistered with state agencies due to their new labeling, resulting in additional administrative cost to the mills.

ERG prepared cost estimates for each of these activities based on FDA database information on feed ban inspections, data from industry-sponsored reports, an industry journal, and Bureau of Labor Statistics data. ERG estimated that about 2,300 feed mills offer some type of blood-meal containing feeds, and that these mills have, on average, about 44 feed mixes that would require reformulation due to their containing blood meal or another ruminant protein that would no longer be offered due to a dedicated facilities/equipment requirement. ERG prepared this estimate assuming that both a blood product prohibition and a dedicated facility/equipment requirement would be proposed. Therefore, to the extent that the estimated 44 feed mixes represent not those containing blood products but rather another ruminant protein that would no longer be available if a dedicated facilities/equipment requirement had been created, these costs will be overestimated. Based on the various labor rates for mill employees, ERG estimated that reformulation efforts would result in a one-time total cost of $2.85 million. Relabeling costs, including both printing plate preparation and additional labor hours, are estimated to result in a one-time cost of $2.77 million. Reregistration costs are projected to add another one-time cost of $1.34 million. In total, these efforts would result in a one-time cost of $6.96 million (average one-time costs per affected mill would be about $3,000). Annualized over 10 years at a 7-percent discount rate, this equates to $990,000 per year (see table 4 of this document).

TABLE 4.—ADMINISTRATIVE COSTS

Cost Element	One-Time Costs (Thousands)	Annualized Costs[1] (Thousands)
Reformulation	$2,853	$406
Relabeling	$2,771	$395
Reregistration	$1,340	$190
Total Costs	$6,963	$990

[1]Over 10 years at a 7 percent discount rate.

Along with the compliance costs mentioned previously, this option would also result in the loss in value of the blood products themselves. ERG's discussions with producers of plasma-based products for therapeutic use led to the following conclusion. Most of these products would not find an acceptable alternative market, or would do so only at a steep price discount, due to their reduced efficacy when used in animals other than cattle. Although ERG projected future market volumes based on industry contacts, current sales of these products are unavailable. Plasma-based feed additives and premium blood-based feed additives are not as species-specific and could be shifted to use in non-ruminant markets assuming a smaller decrease in price than would likely occur with the therapeutic

products. These products, which could be shifted to use in non-ruminant markets, may also incur higher transportation costs because fewer mills would be expected to accept any mammalian proteins currently prohibited in ruminant feed, that is if the dedicated facilities/equipment was also required. Commodity ruminant blood meal, valued at about $41 million in 2003, would also be expected to lose value due to this option. Porcine based blood meal would be expected to increase in value. These losses have not been projected.

At this time, the agency does not have evidence that BSE is transmitted to cattle via blood or blood products. Therefore, the agency has not proposed that these products be banned from use in ruminant feeds in this proposal. The agency requests further comment and scientific information on the need to prohibit the use of blood and blood products in ruminant feed.

d. *Plate waste prohibition.* This alternative would have eliminated the current exemption of inspected meat products which have been cooked and offered for human food, and further heat processed for feed (commonly referred to as plate waste but also including used cellulosic food casings) from the current definition of protein derived from mammalian tissues. It would ban plate waste from use in ruminant feed.

As previously mentioned in the preamble to this proposed rule, the agency requested comment on questions related to the use of plate waste in ruminant feeds in the 2002 ANPRM. These questions focused on the extent of plate waste use in ruminant feeds, the composition of plate waste and its sources, plate waste processing techniques prior to its inclusion in feed, and the adverse and positive impacts for excluding plate waste from feed. Although the agency received many comments to the 2002 ANPRM, they did not include estimates of usage or regulatory impacts that were specific enough to form a foundation for a cost analysis of this option. One comment stated that the amount of plate waste used in ruminant feed was low. Another comment mentioned that substantial tonnages were used in ruminant feed in at least one state. A third comment stated that plate wastes from correctional facilities in another state were used in ruminant feed. No additional data was included to support these statements about the extent of plate waste use in ruminant feed. One comment stated that there were six processors of plate waste in the United States, but did not list these processors or offer any estimate of the use or value of processed plate waste in ruminant feed.

We tried to collect more information on the use of plate waste in ruminant feed and any expected impacts from its ban in ruminant feed, by contacting all those who commented to the ANPRM about plate wastes. The comment that mentioned the use of plate waste from correctional facilities offered additional anecdotal data about this practice in one state, stating this practice was common in areas that had cattle or hog farms located near correctional facilities. It is likely, though, that because most or all of this plate waste is not currently further heat processed for feed, it would not be exempt from the current feed ban as defined in the 1997 ruminant feed final rule. No additional data on actual volumes of plate waste was offered. Another state agriculture agency that responded to the ANPRM, when contacted for further information, also stated that very little, if any, plate waste was further heat processed and used in ruminant feeds. Further, earlier estimates of significant tonnages of plate waste being used in feeds could not be verified by this agency through its investigators in the field. The other comments did not respond to our attempts at further contact.

We also requested the assistance of agency personnel with knowledge of the ruminant feed industry in estimating the extent of use of plate waste in ruminant feeds. Although these agency sources acknowledge that the practice exists, we do not have any estimate of its prevalence on a national level. According to these agency sources, since plate waste (including used cellulosic food casings) is expected to have a relatively low nutritional value when used as a supplement in ruminant feeds, it would not be used in ruminant feed as a general rule. While the agency acknowledges that some plate waste is currently used in ruminant feeds, it cannot offer an estimate of this plate waste volume. The agency acknowledges there would be incremental disposal costs and alternative feed costs, due to a ban on the use of plate wastes in ruminant feeds. However, the agency cannot reliably estimate these costs at this time.

The agency has concluded that this additional measure would be unnecessary given that measures already implemented by USDA and FDA to prohibit SRMs from human food effectively eliminate BSE infectivity from plate wastes. The agency requests further public comment on the extent of plate waste use in ruminant feeds and the costs such a prohibition would impose on any industry members.

e. *SRM prohibition.* A final alternative would prohibit the use of a more extensive list of cattle materials in any animal feed. These materials would include the following: (1) SRMs, (2) The small intestine of all cattle, (3) material from cattle not inspected and passed for human consumption (including nonambulatory disabled cattle), (4) tallow containing more than 0.15 percent insoluble impurities if derived from prohibited material, and (5) MS beef. SRMs would be defined as the skull, brain, eyes, spinal cord, trigeminal ganglia, vertebral column, (excluding the vertebrae of the tail, the transverse processes of the thoracic and lumbar vertebrae, and the wings of the sacrum) and dorsal root ganglia of all cattle 30 months of age or older, plus the tonsils and distal ileum of all cattle regardless of age.

FDA stated in July 2004 that it was considering this alternative, and ERG completed a cost analysis of this option. It is available at the Division of Dockets Management (see **ADDRESSES**).

This alternative would require slaughterers to separate SRMs from slaughter cattle, and require renderers and firms that process dead, down, disabled, and diseased cattle (cattle not inspected and passed for human consumption) to separate all material from such animals from the remaining cattle offal produced for eventual use as animal feed. We estimate that the separation of these SRMs and material from cattle not inspected and passed for human consumption would require about $26.5 million in one-time capital costs (or $3.8 million annualized at 7 percent and $3.1 million annualized at 3 percent, over 10 years). We estimate that the annual cost of the additional labor to separate SRMs from other cattle offal is estimated to cost about $9.2 million annually. The analysis projected that SRMs, instead of being rendered for animal feed, would most likely be rendered for disposal, based on the large amount of banned material this option would generate. To the extent that some states would allow landfilling (another relatively low cost disposal option), this analysis may overestimate compliance costs. Although compliance costs for these activities would be borne initially by slaughterers, and are presented as such by ERG, a portion of the costs are likely to be passed through to cattle producers and consumers. Annual rendering costs, which would include the value of the MBM net of the value of the recovered tallow, would range from $24 million to $88 million at the low estimate of the number of cattle not inspected and passed for human consumption that are currently rendered

to $31 million to $117 million at the high estimate. Additional SRM transportation costs would be incurred to move SRMs and cattle not inspected and passed for human consumption from slaughterers to disposal renderers, and to move nonSRM offal a further distance to another renderer due to their current renderer becoming a for-disposal-only renderer. We estimate these to range from $22 million to $39 million at the low estimate of cattle not inspected and passed for human consumption that are rendered to $33 million—$58 million at the high estimate annually. Additionally, the estimated cost to dispose of the resulting MBM is estimated at $8 million—$16 million at the low estimate and $12 million -$24 million annually at the high estimate. Total annualized costs of the prohibition of SRM, cattle not inspected and passed for human consumption (as shown in table 4 of this document) are estimated to range from $76 million to $161 million at the low end of the estimates of cattle not inspected and passed for human consumption that are rendered. Using the high estimate, annualized costs would range from $102 million to $225 million. FDA expects MBM disposal costs to decrease in the future with the development of alternative markets for MBM of SRM-origin, but can offer no projections of these cost reductions.

These cost estimates assume the development of a rendering industry dedicated entirely to disposal. This industry would earn no fees from selling rendered material, but would instead charge slaughterers and cattle owners for the disposal of prohibited materials. Information submitted to the agency implies that some independent rendering establishments would be used as rendering for disposal, contingent upon a volume of SRM products that would make disposal rendering profitable. It may be possible that some geographic areas would be underserved by disposal renderers due to the lack of availability of SRMs and cattle not inspected and passed for human consumption, necessary to provide the service at a charge that is lower than the cattle producers' indirect cost of on-farm disposal of cattle not inspected and passed for human consumption. Neither FDA nor ERG has the geographic data on renderer locations and offal suppliers, or the financial data on individual renderers necessary to predict the number or geographic location of rendering establishments that will undertake SRM rendering for disposal. Further discussion of the implications for the development of a disposal rendering industry is available in the environmental assessment of this proposed rule. We request comments and data concerning the development of a rendering industry dedicated to rendering for disposal only of SRM and cattle not inspected and passed for human consumption.

ERG determined that the prohibition on the use of tallow derived from the list of cattle materials prohibited under this alternative option that contains more than 0.15 percent hexane-insoluble impurities would result in annualized costs estimated at $2. million. These costs consist of capital and operating costs for polishing centrifuges that would be needed by a small segment of independent renderers (further analysis of this provision led ERG to reduce the estimated cost, as it reported in its analysis of the proposed rule, to $1.78 million annually). The loss in market value of both MS beef and muscle tissue from cattle not inspected and passed for human consumption used in animal feeds is projected at about $75 million. FDA acknowledges that this last estimate is speculative because these sales cannot be distinguished from other renderer sales in U.S. Census data. FDA invites public comments and data on the impacts of the provisions that would prohibit all tallow derived from the prohibited materials that contains more than 0.15 percent insoluble impurities and all MS beef from use in animal feeds. Total costs of this alternative are estimated to range from $154.0 million to $242.6 million annually for the low estimate of cattle not inspected and passed for human consumption. Using the high estimate, total annualized costs are projected at $178 million to $302 million Table 5 of this document displays the costs associated with this alternative.

TABLE 5.—TOTAL COSTS ($ MILLIONS)[1]

Cost Item	One-Time Cost	Annual Costs	Annualized Costs
Capital Investments	$27	N/A	$4
Labor		$9	$9
Net Rendering Costs[2]		($25–$88) to ($31–$117)	($25–$88) to ($31–$117)
SRM Transportation		($22–$39) to ($33–$58)	($22–$39) to ($33–$58)
Disposal Costs		($10–$18) to ($17–$29)	($10–$18 to ($17–$29)
SRM Marking		($0.02–$0.15) to ($0.03–$0.23)	($0.02–$0.15) to ($0.03–$0.23)
Recordkeeping/Labeling		$0.05 to $0.06	$0.05 to $0.06
Feed Substitution		$6–$7	$6–$7
Subtotal—Codified SRM, Dead, Downer Ban		($72–$161) to ($96–$220)	($76–$165) to ($100–$224)
Tallow Restriction	$11	$1	$2
MS Beef Ban		$75	$75
SRM Alternative Total Costs			($153.0–$242) to ($178–$302)

[1] Low cost estimate ranges reflect lower estimate of cattle not inspected and passed for human consumption. High cost estimate range reflect high end of estimates of cattle not inspected and passed for human inspection.

[2] Has been reduced by the value of the tallow products recovered.

To assess the risk reduction from the SRM alternative in this proposed rule, we use two distinct approaches. In the first approach, we assume that the number of new BSE cases is proportional to the amount of all infectious material included in feed. Given this assumption, we can estimate the percentage reduction in risk as the percentage reduction in infectious material.A report by the Scientific Steering Committee of the European Union suggests that the tissues designated as SRM (brain, spinal cord, trigeminal ganglia, dorsal root ganglia, distal ileum, eyes) constitute at least 99.44 percent of the total infective load (Ref. 29). These tissues (SRMs) from cattle 30 months of age and older, the tonsils and distal ileum of all cattle, and all material from cattle not inspected and passed for human consumption, would be prohibited from use in any animal feed under this alternative. SRMs (except for tonsils and distal ileum which are prohibited regardless of age of cattle), when taken from cattle less than 30 months of age, would not be prohibited from use in all animal feed because the probability is very low that tissues from cattle of this age would contain BSE infectivity. FDA estimates, therefore, that banning SRMs from use in any animal feed would effectively remove about 99 percent of any remaining infectivity from possible spread through the feed system.

The second approach uses the Harvard-Tuskegee risk assessment model, making adjustments to the infectivity pathways for cattle and humans that would still be available even after the USDA interim final rules concerning SRMs in human food and Advanced Meat Recovery (AMR) systems became effective. FDA has updated the model to simulate the introduction of five infected cattle into the United States. The model was also updated to further reduction in the spread of BSE among cattle and reduction in human exposure to cattle oral ID_{50}s that would result from a ban on SRMs in animal feeds. The USDA rule, prohibiting the use of SRMs in human food as well as the FDA interim final rule prohibiting the use of SRMs in human food and cosmetics, may cause some offsetting increases in the amount of SRMs that enter non-ruminant feeds; the proposed SRM ban would address this increase in SRMs in animal feed. Under this second approach, we define risk reduction as the reduction in human exposure that would result from the ban on the use of SRM in any animal feed using the HCRA model. These results show that prohibiting the use of SRMs in all animal feed would effectively negate about 95 percent of the remaining risk of human exposure to cattle oral ID_{50}s. When considered as a complementary measure to the USDA and FDA SRM bans for human food, the estimate of overall human exposure reduction from those bans and the SRM alternative is more than 99 percent.

The model does not take into account any additional risk reduction from the restrictions on the use of tallow or MS beef in animal feeds. While we believe these additional restrictions would likely further reduce the risk to human health from BSE to a small degree, we cannot quantify this risk reduction.

Compared to the proposed rule, this alternative would impose an additional $171 million to $226 million in annual compliance costs. As discussed earlier, we believe that this proposed rule provides the appropriate level of protection against the spread of BSE in a cost-effective manner.

V. Paperwork Reduction Act

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

FDA invites comments on the following topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Title: Substances prohibited from use in animal food or feed.

Description: We are proposing to amend our regulations to prohibit the use of certain cattle origin materials in the food or feed of all animals. These materials include the following: (1) The brains and spinal cords from cattle 30 months of age and older (2) the brains and spinal cords from cattle of any age not inspected and passed for human consumption, (3) the entire carcass of cattle not inspected and passed for human consumption if the brains and spinal cords were not removed, (4) MS beef that is derived from cattle from which prohibited materials were not previously removed; and (5) tallow that is derived from cattle materials prohibited in animal feed unless such tallow contains no more than 0.15 percent insoluble impurities. These measures will further strengthen existing safeguards designed to help prevent the spread of BSE in U.S. cattle.

Description of Respondents: Rendering facilities, Medicated feed manufacturers and distributors, livestock feeders.

TABLE 6.—ESTIMATED ANNUAL RECORDKEEPING BURDEN

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeper	Total Annual Records	Hours per Recordkeeper	Total Hours	Operation and Maintenance Cost
589.2001(b)(2)(iv) and (b)(3)(i)	141	1	141	20	2,820	$47,940
Total					2,820	

The estimated recordkeeping burden is derived from agency resources and discussions with affected industry. The recordkeeping requirement in proposed § 589.2001(b)(2)(iv) will apply to the limited number of renderers who will handle prohibited bovine material. We estimate that no more than 50 rendering firms will be involved in the handling

of this material. Although we may consider the distribution records needed to comply with this proposed regulation ''usual and customary'' and thus not subject to PRA, we believe there will be burden associated with setting up a system to assure such records are sufficient to address the proposed recordkeeping requirement. Likewise, although we may consider the records necessary to comply with proposed § 589.2001(b)(3)(i) as ''usual and customary'' and not subject to PRA burden accounting, we are including a burden estimate to cover establishment of a system to assure existing receipt and manufacturing records adequately address this proposed requirement.

In compliance with the PRA (44 U.S.C. 3507(d)), the agency has submitted the information collection provisions of this proposed rule to OMB for review. Interested persons are requested to submit written comments on the information collection provisions to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB).

OMB is still experiencing significant delays in the regular mail, including first class and express mail, and messenger deliveries are not being accepted. To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: Fumie Yokota, Desk Officer for FDA, FAX: 202–395–6974.

VI. Environmental Impact

The agency has carefully considered the potential environmental impact of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. FDA's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Division of Dockets Management (see ADDRESSES) between 9 a.m. and 4 p.m., Monday through Friday.

VII. Federalism

We have analyzed this proposed rule in accordance with the principles in Executive Order 13132. We have determined that the proposed rule does not contain policies that have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Accordingly, we have tentatively concluded that the proposed rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement is not required.

VIII. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

IX. References

The following references have been placed on display in the Division of Dockets Management (see **ADDRESSES**) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday. FDA has verified the Web site addresses, but FDA is not responsible for any subsequent changes to the Web site after this document publishes in the **Federal Register**.

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14. U.S. Food and Drug Administration, Center for Veterinary Medicine, Summary of FDA Inspectional Findings and Recalls Involving the Ruminant Feed Ban Regulation (21 CFR 589.2000) Conducted in Fiscal Year 2004 and First Half of Fiscal Year 2005, September 2005.

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List of Subjects in 21 CFR Part 589

Animal feeds, Animal foods, Food additives, Incorporation by reference.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, the Food and Drug Administration, it is proposed that 21 CFR part 589 be amended to read as follows:

PART 589—SUBSTANCES PROHIBITED FROM USE IN ANIMAL FOOD OR FEED

1. The authority citation for 21 CFR part 589 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 343, 348, 371.

2. Section 589.2000 is amended by revising paragraph (a)(1) and by adding paragraphs (c)(4) and (e)(3) to read as follows:

§ 589.2000 Animal proteins prohibited in ruminant feed.

(a) * * *

(1) *Protein derived from mammalian tissues* means any protein-containing portion of mammalian animals, excluding: Blood and blood products; gelatin; tallow containing no more than 0.15 percent insoluble impurities and tallow derivatives as specified in § 589.2001; inspected meat products which have been cooked and offered for human food and further heat processed for feed (such as plate waste and used cellulosic food casings); milk products (milk and milk proteins); and any product whose only mammalian protein consists entirely of porcine or equine protein.

* * * * *

(c) * * *

(4) Renderers shall comply with all applicable requirements under § 589.2001.

* * * * *

(e) * * *

(3) Renderers shall comply with all applicable requirements under § 589.2001.

* * * * *

3. Section 589.2001 is added to read as follows:

§ 589.2001 Cattle materials prohibited in animal food or feed.

(a) *Definitions*—(1) *Cattle materials prohibited in animal feed include*:

(i) The brains and spinal cords of cattle 30 months of age and older;

(ii) The brains and spinal cords of cattle not inspected and passed for human consumption as defined in paragraph (a)(2) of this section;

(iii) The entire carcass of cattle not inspected and passed for human consumption from which brains and spinal cords were not removed;

(iv) Mechanically separated beef as defined in paragraph (a)(3) of this section that is derived from materials specified in paragraphs (a)(1)(i), (a)(1)(ii), and (a)(1)(iii) of this section; and

(v) Tallow as defined in paragraph (a)(5) of this section that is derived from materials specified in paragraphs (a)(1)(i), (a)(1)(ii), and (a)(1)(iii) of this section. Cattle materials prohibited in animal feed do not include:

(A) Tallow derivatives as defined in paragraph (a)(6) of this section and;

(B) Tallow as defined in paragraph (a)(5) of this section that is derived from materials specified in paragraphs (a)(1)(i), (a)(1)(ii), and (a)(1)(iii) of this section and that contains no more than 0.15 percent insoluble impurities. Insoluble impurities must be measured by the method entitled ''Insoluble Impurities'' of the American Oil Chemists' Society (Official Method Ca 3a–46), or another method equivalent in accuracy, precision, and sensitivity to AOCS Official Method Ca 3a–46. The Director of the Office of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain copies of the method from the AOCS (*http://www.aocs.org*). Copies may be examined at the Center for Food Safety and Applied Nutrition's Library, 5100 Paint Branch Pkwy., College Park, MD 20740, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*.

(2) *Cattle not inspected and passed for human consumption* means cattle of any age that were not inspected and passed for human consumption by the appropriate regulatory authority. This term includes nonambulatory disabled cattle. Nonambulatory disabled cattle are cattle that cannot rise from a recumbent position or that cannot walk, including, but not limited to, those with broken appendages, severed tendons or

ligaments, nerve paralysis, fractured vertebral column, or metabolic conditions.

(3) *Mechanically separated beef* means a finely comminuted meat food product, resulting from the mechanical separation and removal of most of the bone from attached skeletal muscle of cattle carcasses and parts of carcasses.

(4) *Renderer* means any firm or individual that processes slaughter byproducts, animals unfit for human consumption, or meat scraps. The term includes persons who collect such materials and subject them to minimal processing, or distribute them to firms other than renderers (as defined in this paragraph) whose intended use for the products may include animal feed, industrial use, or other uses. The term includes renderers that also blend animal protein products.

(5) *Tallow* means the rendered fat of cattle obtained by pressing or by applying any other extraction process to tissues derived directly from discrete adipose tissue masses or to other carcass parts and tissues.

(6) *Tallow derivative* means any product obtained through initial hydrolysis, saponification, or trans-esterification of tallow; chemical conversion of material obtained by hydrolysis, saponification, or trans-esterification may be applied to obtain the desired product.

(b) *Requirements*. (1) No animal feed or feed ingredient shall be manufactured from, processed with, or otherwise contain, cattle materials prohibited in animal feed as defined in paragraph (a)(1) of this section.

(2) Renderers that manufacture, process, blend, or distribute cattle materials prohibited in animal feed as defined in paragraph (a)(1) of this section, or products that contain or may contain cattle materials prohibited in animal feed, shall take the following measures to ensure that materials identified in paragraph (b)(1) of this section are not introduced into animal feed:

(i) Once cattle materials prohibited in animal feed have been separated from other cattle materials, provide for measures to avoid cross-contamination;

(A) Use separate equipment while handling cattle materials prohibited in animal feed; or

(B) Use separate containers that adequately prevent contact with animal feed, animal feed ingredients, or equipment surfaces;

(ii) Label the cattle materials prohibited in animal feed and products that contain or may contain cattle materials prohibited in animal feed in a conspicuous manner as follows: ''Do not feed to animals'';

(iii) Mark the cattle materials prohibited in animal feed and products that contain or may contain cattle materials prohibited in animal feed with an agent that can be readily detected on visual inspection; and

(iv) Establish and maintain records sufficient to track cattle materials prohibited in animal feed to ensure such material is not introduced into animal feed, and make the records available for inspection and copying by the Food and Drug Administration.

(3) Renderers that manufacture, process, blend, or distribute any cattle materials shall take the following measures to ensure that materials identified in paragraph (b)(1) of this section are not used in animal feed:

(i) Establish and maintain records sufficient to demonstrate that material rendered for use in animal feed was not manufactured from, processed with, or does not otherwise contain, cattle materials prohibited in animal feed, and make the copies available for inspection and copying by the Food and Drug Administration; and

(ii) Comply with all applicable requirements under § 589.2000 regarding animal proteins prohibited in ruminant feed.

(c) *Adulteration and misbranding*. (1) Failure of a renderer to comply with the requirements in paragraphs (b)(2)(i), (b)(2)(iii), (b)(2)(iv), or (b)(3)(i) of this section will render the animal feed or feed ingredients adulterated under section 402(a)(4) of the Federal Food, Drug, and Cosmetic Act (the act).

(2) Animal feed or feed ingredients that are not in compliance with paragraph (b)(1) of this section are adulterated under section 402(a)(2), 402(a)(3), or 402(a)(5) of the act.

(3) Animal feed or feed ingredients that are not in compliance with the labeling requirements of paragraph (b)(2)(ii) of this section are misbranded under section 403(a)(1) or 403(f) of the act.

(4) Failure of a renderer to comply with the requirements in paragraph (d) of this section will render the animal feed or feed ingredients adulterated under section 402(a)(4) of the act.

(d) *Inspection; records retention*. Records required to be made available for inspection and copying by the Food and Drug Administration, as required by this section, shall be kept for a minimum of 1 year.

Dated: July 26, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

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To extend the waiver authority of the Secretary of Education with respect to student financial assistance during a war or other military operation or national emergency. (Sept. 30, 2005; 119 Stat. 2043)

H.R. 2385/P.L. 109–79

To extend by 10 years the authority of the Secretary of Commerce to conduct the quarterly financial report program. (Sept. 30, 2005; 119 Stat. 2044)

H.R. 3200/P.L. 109–80

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H.R. 3784/P.L. 109–81

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H.R. 3864/P.L. 109–82

Assistance for Individuals with Disabilities Affected by Hurricane Katrina or Rita Act of 2005 (Sept. 30, 2005; 119 Stat. 2050)

S. 1752/P.L. 109–83

To amend the United States Grain Standards Act to reauthorize that Act. (Sept. 30, 2005; 119 Stat. 2053)

H.R. 3667/P.L. 109–84

To designate the facility of the United States Postal Service located at 200 South Barrington Street in Los Angeles, California, as the "Karl Malden Station". (Oct. 4, 2005; 119 Stat. 2054)

H.R. 3767/P.L. 109–85

To designate the facility of the United States Postal Service located at 2600 Oak Street in St. Charles, Illinois, as the "Jacob L. Frazier Post Office Building". (Oct. 4, 2005; 119 Stat. 2055)

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